SUPREME COURT, U. S.
FILED
DEC 20 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-70

LEWIS H. GOLDFARB and RUTH S. GOLDFARB, individually and as Representatives of the Class of Reston, Virginia Homeowners,

Petitioners,

v.

VIRGINIA STATE BAR and
FAIRFAX COUNTY BAR ASSOCIATION,

Respondents.

**ON A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

**PETITION FOR CERTIORARI FILED AUGUST 5, 1974
CERTIORARI GRANTED OCTOBER 29, 1974**

INDEX

	Page
RELEVANT DOCKET ENTRIES	1
COMPLAINT	5
ORDER AND JUDGMENT	17
EXHIBITS IN THE DISTRICT COURT	19
1. Minimum Fee Schedule for Virginia State Bar, 1962 [Exhibit 26]*	19
2. Minimum Fee Schedule Report for Virginia State Bar, 1969 [Exhibit 27]*	24
3. Minimum Fee Schedule for The Fairfax County Bar Association, 1962 [Exhibit 28]*	29
4. Minimum Fee Schedule for The Alexandria Bar Association, The Arlington Bar Association, The Fairfax Bar Association and The Loudoun Bar Association, 1969 [Exhibit 29]*	37
5. Virginia State Bar Opinion No. 98, June 1, 1960 [Exhibit 30]	45
6. Virginia State Bar Opinion No. 170, May 28, 1971 [Exhibit 31]	47
7. Letter from Department of Justice to McGinnis dated November 24, 1961 [Exhibit 36]	49
8. Letter from Bernstein to Cregger dated May 19, 1965 [Exhibit 37]	51

---

* Relevant portions only.

		Page
9.	Letter from Cregger to Bernstein dated May 26, 1965 [Exhibit 38]	52
10.	Letter from Cregger to Bernstein dated June 14, 1965 [Exhibit 39]	53
11.	Letter from Bernstein to Cregger dated July 8, 1965 [Exhibit 40]	54
12.	Letter from Cregger to Bernstein dated August 18, 1965 [Exhibit 41]	56
13.	Letter from Cregger to Members of Arlington County Bar Association dated August 11, 1965 [Exhibit 42]	57

EXCERPTS FROM REPORTERS TRANSCRIPT. 59

(The Opinion of the District Court, together with its Findings of Fact and the Stipulations of the Parties are printed in Appendix A to the Petition for a Writ of *Certiorari* in this case. The Opinion of the Court of Appeals, including the Dissent, is printed as Appendix B to that Petition. The Judgments of the Court of Appeals are printed as Appendix C to that Petition. Accordingly, none of them will be reprinted in this Appendix.)

APPENDIX

RELEVANT DOCKET ENTRIES UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA ALEXANDRIA DIVISION

[Title omitted in printing]

DATE	
1972	
Feb. 22	Complaint filed.
Apr. 3	Answer of Defendant Fairfax Co. Bar Association — filed.
Apr. 14	Answer filed by Va. State Bar.
Sept. 1	Motions to amend complaint and to extend time to complete discovery.
Sept. 8	Trial Proceedings: J. Bryan. This matter came on motion of the Pltf. to amend the complaint and to extend the time within which all discovery must be completed. Appearances of counsel. Motion argued and denied as to adding parties but allowing pltfs. to be dismissed from the action without prejudice. Order to follow.
Sept. 14	Trial Proceedings: (In Chambers) (J. Lewis) This matter came on for formal pre-trial. Appearances of counsel for parties. Motions to be filed in ten days. Defts. have to Sept. 28, 1972 to file additional answers. Motions to be heard on 9/29/72 by Judge Bryan at 2:00 P.M. Motion of Deft. Fairfax County Bar Assoc. for summary judgment filed. Alexandria Bar Assoc. motion to dismiss to be heard on 9/29/72. List of

exhibits and witnesses of Fairfax Bar, Alex. Bar., Arlington Bar, Virginia State Bar filed. Motion to see if pltf is entitled to Jury to be heard on 9/29/72. Case set for hearing on the merits as to liability only on November 6, 1972 with Jury. Memorandum of law to be filed in five (5) days, parties have five (5) days to answer. Proposed stipulations of the Virginia State Bar filed. Proposed pretrial statement on behalf of deft Fairfax Bar Assoc. filed. Pltfs. list of witnesses and exhibits filed.

Sept. 22 — Motion for summary judgment with memorandum of points & authorities in support thereof filed by deft., Va. State Bar.

Sept. 25 — Motion to determine propriety of class action & to provide for notice to class pursuant to R.23(c)(2) — filed by pltfs.

Sept. 28 — Order certifying that this action be maintained as class action entered — filed, copies sent.

Sept. 29 — Trial proceedings: J. Bryan. This matter came on all defts. motion for summary judgment and motion to determine propriety of class action. Appearances of counsell. Arguments heard. Motion for summary judgment denied, case shall be maintained as class action.

Dec. 11 — Trial Proceedings: J. Bryan. This cause came on for approval of settlement. Appearances of counsel, settlement approved order to follow.

Dec. 13 — Trial proceedings: J. Bryan. This cause came on for trial by the Court. Appearances, Parties and counsel. Pltfs. adduced evidence and

rests. Defts. adduced evidence and rests. Post trial brief's to be submitted, matter taken under advisement.

1973

Jan. 5 — Memorandum opinion as to Fairfax Bar Assn. & Va. State Bar Assn. filed (Matter continued to Jan. 26, 1973)

Jan. 17 — Motion to amend judgment together with points & authorities filed by deft., Fairfax Bar Assn.

Jan. 19 — Order denying plfts.' motion to amend findings entered — filed. Copies sent.

Feb. 2 — Trial Proceedings (AVB) Parties appeared. Matter came on for hearing on remaining claim for damages of plaintiffs against deft. Fairfax Bar Assn. Matter stayed. See order and judgment.

Order and judgment as to Virginia State bar and Fairfax Bar Assn. entered and filed — copies to all counsel of record.

Feb. 8 — Notice of appeal of order and judgment of 2/2/73 filed by pltfs. Copies sent.

Feb. 15 — Notice of appeal of Para. I and II of order of 2/2/73 filed by deft., Fairfax Co. Bar. Assn. Copies sent.

Feb. 28 — Motion (renewal) to amend judgment of this Court to make Court's ruling prospective only filed by Fairfax County Bar Assn.

Feb. 28 (continued)	Order denying motion (renewal) to amend judgment of this Court to make Court's ruling prospective only (by Fairfax County Bar Assn.) entered—filed. Copies sent.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION

[Title omitted in printing]

COMPLAINT FOR INJUNCTION AND TREBLE DAMAGES UNDER THE ANTITRUST LAWS

I. JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 1 of the Act of Congress of July 2, 1890, 15 U.S.C. § 1, as amended and supplemented, commonly known as the Sherman Act, and Sections 4 and 16 of the Act of Congress of October 15, 1911, 15 U.S.C. §§ 15 and 26, as amended and supplemented, commonly known as the Clayton Act.

2. The purpose of this action is to recover damages against defendants for injuring the individual plaintiffs and class of persons they represent in their individual capacities as homebuyers which injury proximately resulted from defendants' violation of the antitrust laws of the United States; and to restrain and enjoin defendants from continuing the illegal monopoly and the combinations, conspiracies and contracts in restraint of trade and commerce to the injury of the organizational plaintiffs and the class of persons which they represent.

3. The defendants maintain offices, transact business and are each found within the Eastern District of Virginia.

II. PLAINTIFFS

4. Plaintiffs Lewis H. Goldfarb and Ruth S. Goldfarb are husband and wife and reside in Reston, Virginia. On January 15, 1972, they purchased a home in Reston and,

by reason thereof, were required to use the services offered by defendants and their members.

5. Plaintiff Northern Virginia Fair Housing, Inc. is a voluntary non-profit association organized in 1963 and incorporated under the non-stock corporation law of the State of Virginia for the purpose of promoting equal housing opportunities for all persons in Alexandria, Arlington, Fairfax City, Fairfax County and Falls Church, hereinafter referred to as Northern Virginia. In carrying out this purpose, the association, through its members, maintains a housing placement service to assist homeseekers who are unable to locate housing in Northern Virginia either as a result of racial discrimination or because of a scarcity of housing for people of low and moderate incomes. In this latter connection, the association works to encourage local governments, builders, realtors and related parties to join in a common effort to promote the availability of low-cost housing.

6. Plaintiff Housing Opportunities Council of Metropolitan Washington, Inc. operates as a housing opportunities advocate within the metropolitan area of Washington (including the Maryland and Virginia suburban jurisdictions). The Council aims to make it possible for Black and minority homeseekers to rent or buy any existing housing, free of racial barriers and discrimination, and to promote and facilitate the provision of additional housing for low- and moderate-income families in all sections of the metropolitan area. The Council conducts several programs designed to communicate with the general public and specific groups in the area, such as, the housing industry, civic and religious groups, potential Black and low-income homeseekers, government leaders, and large business firms, to make the public and these groups aware of the need and the legal basis for equal housing opportunity, and to enlist the support of these audiences in achieving that objective.

7. The individual plaintiffs bring this action for damages on their own behalf and, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of all similarly situated residents of Reston, Virginia. The organizational plaintiffs bring this action for injunctive relief on their own behalf and, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all prospective homebuyers in the Washington Metropolitan Area. The classes represented by plaintiffs are so numerous that joinder of all members is impracticable; there are questions of law or fact common to the classes and these questions predominate over any questions affecting only individual members; the claims or defenses of plaintiffs are typical of the claims of the classes; plaintiffs will fairly and adequately protect the interests of the classes; defendants have acted on grounds generally applicable to each class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to each class as a whole; and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

III.
DEFENDANTS

8. The Virginia State Bar (hereinafter referred to as the "State Bar") is an association organized and existing under the laws of the State of Virginia and maintains offices and transacts business in the Eastern District of Virginia. All persons who practice law in the State of Virginia are required to become members of the State Bar. One of the functions of the State Bar is to insure that all of its members act in accordance with the standards of professional conduct as codified in the Canons of Ethics promulgated by the American Bar Association. In

order to fulfill this function the State Bar has established a Committee on Ethics and Grievances (hereinafter referred to as the Committee) for each Congressional District in the State. One function of the Committee is to receive complaints against those association members alleged to have violated the canons and to conduct investigations and hold hearings to determine whether formal sanctions against the named party would be appropriate. Formal sanctions include reprimand, suspension and disbarment from the practice of law in the State of Virginia.

9. The Fairfax County Bar Association (hereinafter referred to as the Fairfax Association) is a voluntary association organized and existing under the laws of the State of Virginia. It is composed entirely of state-licensed attorneys who practice in the County of Fairfax. One of the functions of the Fairfax Association is to insure that all of its members act in accordance with the standards of professional conduct as codified in the Canons of Ethics by assisting the local Committee in its efforts to do the same.

10. The Arlington County Bar Association (hereinafter referred to as the Arlington Association) is a voluntary association organized and existing under the laws of the State of Virginia. It is composed entirely of state-licensed attorneys who practice in the County of Arlington. One of the functions of the Arlington Association is to insure that all of its members act in accordance with the standards of professional conduct as codified in the Canons of Ethics by assisting the local Committee in its efforts to do the same.

11. The Alexandria Bar Association (hereinafter referred to as the Alexandria Association) is a voluntary association

organized and existing under the laws of the State of Virginia. It is composed entirely of state-licensed attorneys who practice in the City of Alexandria. One of the functions of the Alexandria Association is to insure that all of its members act in accordance with the standards of professional conduct as codified in the Canons of Ethics by assisting the local Committee in its efforts to do the same.

IV.
THE CO-CONSPIRATORS

12. The members of each of the associations who engage in the practices described herein are not named as defendants but are named as co-conspirators. All of these members participated as co-conspirators in the offense alleged herein and performed acts and made statements in furtherance thereof.

V.
NATURE OF TRADE AND COMMERCE

13. The activities of the associations and their members, as described herein, are within the flow of interstate commerce and have an effect upon that commerce.

14. Members of the associations perform all the legal services incident to the purchase and sale of real estate in Northern Virginia, including, but not limited to, title examination, preparation of and recordation of documents. Thousands of parcels of real estate are sold in Northern Virginia each year.

15. Because of the transient nature of a significant portion of the population of the Metropolitan Washington D.C. area, of which Northern Virginia forms a part, a substantial number of persons using the services of members

of the associations in connection with real estate sales are persons moving into Northern Virginia from places outside the State of Virginia and persons moving from Northern Virginia to places outside the State of Virginia.

16. Because the State of Virginia requires that all of the aforementioned services be performed only by attorneys licensed to practice law within the State, persons moving to and from places outside of the State must use the services of the members of the associations. The policies, acts and practices of the associations and their members thereby affect the aforesaid interstate movement of persons.

17. As an additional part of their service members of the associations often assist their clients in the preparation of documents incident to securing the financing necessary to the purchase of real estate in Northern Virginia and in obtaining property and title insurance for it. Such financing and insurance is often obtained from sources outside the State of Virginia and moves in interstate commerce into the State of Virginia through the activities of members of the associations.

VI.
OFFENSE

18. For many years up to and including the date of filing of this Complaint the defendants and co-conspirators have been continuously engaged in an unlawful combination and conspiracy to restrain the aforesaid interstate trade and commerce in the offering for sale and sale of legal services in the Washington Metropolitan Area and throughout the State of Virginia in violation of Section 1 of the Sherman Act. Said unlawful combination and conspiracy is

continuing and will continue unless the relief hereinafter prayed for is granted.

19. The aforesaid combination and conspiracy have consisted of a continuing agreement and concert of action between the defendants and co-conspirators to raise, fix and maintain the fees for legal services performed by members of the associations.

20. In effectuating the aforesaid combination and conspiracy the defendants and co-conspirators have done things which, as hereinbefore alleged, they agreed and conspired to do, including, among other things, the following:

a) Circulated and adhered to published recommended fees for legal services commonly known as "minimum fee schedules".

b) Established local committees to investigate and enforce alleged violations of the minimum fee schedule.

c) Subjected any member or licensed attorney who habitually failed to abide by the minimum fee schedule to sanctions by the associations, including revocation of the license to practice law.

VII.
EFFECTS ON PLAINTIFFS

21. The aforesaid combination and conspiracy has had the following effects, among others, on the individual plaintiffs and the class which they represent:

a) The fees charged for legal services incident to the purchase of a home have been

raised, fixed and maintained at an artificial and non-competitive level;

b) As a direct result of the acts of defendants and co-conspirators described herein, plaintiffs and the class they represent have suffered and continue to suffer injury to their business and property.

22. The aforesaid combination and conspiracy has had the following effects, among others, on the organizational plaintiffs and the class they represent:

a) The cost of legal services incident to the purchase of a home in Northern Virginia has been raised, fixed and maintained at an artificial and non-competitive level thereby increasing the total cost of housing in Northern Virginia.

b) Because the total cost of purchasing a home in Northern Virginia has been inflated in the aforesaid manner, plaintiffs' efforts to find housing in that area for low and moderate income families is substantially impeded.

c) As a direct result of the acts of defendants and co-conspirators described herein, plaintiffs and the class they represent have suffered and continue to suffer injury to their business and property.

VIII.
DAMAGES

23. As a consequence of the unlawful act of defendants, as aforesaid, the individual plaintiffs and the class they

represent have been injured in their business and property in the approximate amount of $400,000 as of the date of filing of this complaint.

24. All plaintiffs and the classes they represent continue to incur injury to their business and property for as long as defendants persist in their unlawful conduct.

WHEREFORE Plaintiffs pray:

1. That the Court adjudge and decree that the defendants and co-conspirators have engaged in an unlawful combination and conspiracy in restraint of the aforesaid trade and commerce in the sale of legal services in the State of Virginia in violation of Section 1 of the Sherman Act.

2. That the defendants and all other persons acting or claiming to act on their behalf and each of their members be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the combination and conspiracy hereinbefore alleged, or from engaging in any other combination, conspiracy, contract, agreement, understanding, or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect.

3. That the defendants, and all other persons acting or claiming to act on their behalf, and each of their members, be enjoined and restrained from agreeing to adhere to any schedule concerning the amounts of any fees for the performance of legal services in the State of Virginia.

4. That judgment be entered in favor of the individual plaintiffs and the class they represent against defendants in a sum equal to treble the amount of damages suffered by said plaintiffs and the class they represent by

reason of the violations of the law herein complained of, together with costs of this suit and reasonable attorney's fees; and

5. That plaintiffs have such further relief as the Court may deem to be just and proper.

/s/ William R. Durland
/s/ Lewis H. Goldfarb
3934 Old Lee Highway
Fairfax, Virginia 22030
Ph. 591-4136
Attorneys for Plaintiffs

DISTRICT OF)
: ss.:
COLUMBIA)

The undersigned, being duly sworn, deposes and says that he is a plaintiff in the above action; that he has read the foregoing complaint and states that it is true to the best of his knowledge, belief or information.

/s/ Lewis H. Goldfarb
Plaintiff Lewis H. Goldfarb

Sworn to before me this 18th
day of February, 1972

/s/ _____
Notary Public

STATE OF)
: ss.:
COUNTY OF)

The undersigned, being duly sworn, deposes and says that she is a plaintiff in the above action; that she has read the

foregoing complaint and states that it is true to the best of her knowledge, belief or information.

/s/ Ruth S. Goldfarb
Plaintiff Ruth S. Goldfarb

Sworn to before me this 20th
day of Feb., 1972.

/s/_____
Notary Public

DISTRICT OF)
: ss.:
COLUMBIA)

The undersigned, being duly sworn, deposes and says that he is a plaintiff in the above action; that he has read the foregoing complaint and states that it is true to the best of his knowledge, belief or information.

/s/ Lewis H. Goldfarb, Pres.
Plaintiff Northern Virginia
Fair Housing, Inc.

Sworn to before me this 18th
day of February, 1972

/s/_____
Notary Public, D.C.

DISTRICT OF)
: ss.:
COLUMBIA)

The undersigned, being duly sworn, deposes and says that he is a plaintiff in the above action; that he has read

the foregoing complaint and states that it is true to the best of his knowledge, belief or information.

/s/ James H. Harvey
Plaintiff Housing
Opportunities Council
of Metropolitan Washington

Sworn to before me this 18th
day of February, 1972

/s/_____
Notary Public

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION

[Title omitted in printing]

ORDER AND JUDGMENT

This cause having been tried on December 13, 1972, and this Court having issued its Memorandum Opinion and Findings of Fact dated January 5, 1973, which are hereby incorporated herein by reference, now therefore it is hereby

I

ORDERED, ADJUDGED, AND DECREED that the 1962 and 1969 Minimum Fee Schedules of the defendant Fairfax Bar Association are declared to be unlawful and in violation of the Sherman Act, 15 U.S.C. § 1, and the defendant Fairfax Bar Association is directed to cancel its schedule of June 12, 1969, and is hereby enjoined from adopting, publishing or distributing any such schedules of minimum or suggested fees, including copies of the existing schedules; and it is further

II

ORDERED, ADJUDGED, AND DECREED that within thirty days from the entry of this Order and Judgment, the defendant Fairfax Bar Association shall mail a copy of this Order and Judgment to each of its members and shall advise them that the Minimum Fee Schedule dated June 12, 1969, has been cancelled as of the date hereof; and it is further

III

ORDERED, ADJUDGED, AND DECREED that the complaint is hereby dismissed as against the defendant Virginia State Bar; and it is further

IV

ORDERED, ADJUDGED, AND DECREED that all further proceedings with respect to the remaining claim for damages of the plaintiff class against the defendant Fairfax Bar Association are hereby stayed pending the determination of the appeal of the plaintiffs from paragraph III of this Order and Judgment and pending the determination of the appeal of the defendant Fairfax Bar Association from paragraphs I and II of this Order and Judgment.

There appearing to the Court to be no just reason for delay in entry of this Order and Judgment as to the claim of plaintiffs against the defendant Virginia State Bar and the claim of plaintiffs for declaratory and injunctive relief against the defendant Fairfax Bar Association, now, therefore, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court hereby expressly directs the Clerk of the Court to enter this Order and Judgment forthwith.

Dated: February 2, 1973

/s/_____
Albert V. Bryan, Jr.
United States District Judge

[Exhibit 26]

VIRGINIA STATE BAR

MINIMUM FEE SCHEDULE REPORT

1962

Printed with the Compliments of
THE MICHIE COMPANY

To the Members of the Virginia State Bar:

> "The lawyers have slowly, but surely, been committing economic suicide as a profession."

Five years of study by a special committee of the American Bar Association resulted in the foregoing conclusion. Similar studies by many state bar organizations showed that such conclusion is warranted.

One of the remedies for the economic problem is the promulgation or adoption of a suggested minimum fee schedule on a state-wide basis. The Virginia Canons of Professional Ethics (canon 12) state "it is proper for a lawyer to consider a schedule of minimum fees adopted by a Bar Association". Traditionally, lawyers have always had occasions to discuss with their brethren the fair evaluation of services and the setting of fees. A state-wide schedule is, in effect, a state-wide discussion of what constitutes fair and reasonable minimum fees.

The enclosed statement of fees is *not* a minimum fee schedule. It is a compendium of a two-year study of legal fees in Virginia. At the 1962 Annual Meeting of the Virginia State Bar the Bar's Council voted favorably on this dissemination of the statement.

The study was made by the Bar's Committee on Economics of Law Practice. First, the Committee carefully examined and considered the twenty-one minimum fee schedules that have already been adopted by local bar organizations in Virginia. Secondly, the Committee received and carefully considered the numerous fee schedules that have been adopted in other states. Thirdly, (and most important) the Council of the Bar made a state-wide study of minimum fees in the judicial circuits of Virginia and submitted same to the Committee.

The Committee began the processing of all returns, and existing local Virginia schedules, and arrived at the average and median fees charged on a state-wide basis. Following this, the entire eight-man committee met to consider what would represent fair fees in 116 instances in 15 fields of law. The fees shown in the enclosed statement represent the considered judgment of the Committee as to fair minimum fee in each instance.

After careful consideration, it was the unanimous opinion of the Committee that the best interests of the members of the Virginia State Bar require a *consideration* of the adoption of some form of minimum fee schedule. The final form must be and should be left to a decision by the *entire* bar. Such an important step should have the consideration and judgment of all Virginia lawyers before any positive proposal be made or action taken. The members are earnestly invited to submit their comments and recommendations which will be given careful consideration by the Committee.

The Committee feels that its membership has afforded as good a coverage, not only geographically, but also in experience in the fifteen branches or fields of practice as has been reasonably practical in a matter of this kind. However, there are areas of the state which may

have particular practices and problems not known to the Committee, and there are certainly branches or fields of practice in which other members of the Bar are better qualified and more experienced than the Committee members. We urge that all inequities or omissions be called to the attention of the Committee.

Following this, the Committee will then submit to the Virginia State Bar its further recommendations as to the advisability of adopting some form of schedule of minimum fees, the mechanics of so doing, and the methods of implementation.

COMMITTEE ON ECONOMICS OF LAW PRACTICE
203 Governor Street
Richmond 19, Virginia

* * *

Schedule of minimum fees

5% on first $50,000
4% of next $50,000
3% of next $400,000
2% of all above $1,000,000
} on the gross principal value of probate assets as of date of death

In no event shall the fee for full administration be less than $25.00

REALTY

Title examinations (not including closing, settlement, preparation of papers):

(a) 1% of the first $30,000.00 of the loan amount or purchase price.

(b) ½ of 1% of the loan amount or purchase price from $30,000.00 to $250,000.00.

(c) Over $250,000.00 of loan amount or purchase price, by negotiation or agreement, but not less than the fee for $250,000.00.

(d) Minimum fee for title examination, $50.00.

(e) Simultaneous examination of title for purchaser and lender, the above minimum fee based on purchase price shall apply, except an additional fee of not less than $25.00 shall be made.

(f) Limited title certificate or so-called run-up:
Your Committee recommends against the use of any limited title certificate, based on a search for less than the customary period of time, due to the inherent hazards and perils involved in such an undertaking. In cases where this has been fully explained to the client and he nevertheless insists upon such a limited title examination, the fee set forth in paragraph (d) above, in addition to the fees for closing, and settlement, and preparation of papers, shall apply as a minimum.

Deed of bargain and sale ..... $ 15.00
Deed of bargain and sale and assumption 20.00
(If description or other information not furnished, add $5.00 to above.)
Assumption Transactions: In assumption transactions the minimum title examination fee of $50.00, applicable to Limited Title Certificate or so-called run-up chargeable to the buyer shall be in addition to the fee for preparation of the deed and for the closing and settlement fees chargeable to the respective parties.
Deed of trust and note 25.00
Deed of release 15.00
Contract of sale—See Contracts and Agreements.

Lease—See: Contracts and Agreements.
Waiver letter—Services incident to obtaining letter from FHA or VA waiving title defects 10.00
Closing and settlement fees, in addition to fees for title examination and preparation of papers:

(a) Closing and escrow fee, to purchaser or borrower .. 25.00
Explanation: This fee required upon preparation of statement, and disbursement of funds on behalf of or for account of purchaser or borrower, *plus*

(b) Settlement fee, to seller 25.00
Explanation: This fee required upon preparation of settlement statement, proration of amounts due to and from seller and disbursements of sales proceeds for account of seller.
Note: An attorney who conducts the entire transaction shall charge the above settlement and closing fees to the respective parties.

Marginal release, examination thereof made by anyone other than closing attorney 5.00
Marginal release, as noteholder or as attorney in fact for noteholder 10.00
Mechanic's lien, preparation and filing with notices 50.00

TAX MATTERS

General Statement:
The total fee for a particular matter shall include charges for time consumed in conferences with clients and in research and shall reflect the novelty and complexity of points of law involved, the tax benefits to the client, and the responsibility involved. The fee shall give effect to a minimum hourly rate charged by the attorney involved.

WILLS AND ESTATE PLANNING

Whenever Federal estate taxes constitute a material factor, the charges to be made for the following instruments should be increased appropriately. Also, additional charges should be made for the time consumed by conferences, preparation of other instruments, supervision of execution of documents, and other duties, with due consideration being given to the importance of the matter, the responsibility involved, and the experience of the attorney.
Wills:

(a) Of basic type, not including future interests, trusts or fiduciary powers 25.00

(b) With trust provisions for family protection and preservation of small estates 75.00

[EXHIBIT 27]

VIRGINIA STATE BAR

MINIMUM FEE SCHEDULE REPORT

1969

Printed with the Compliments of
THE MICHIE COMPANY

MINIMUM FEE SCHEDULE REPORT (1969)

STATEMENT BY COMMITTEE ON PROFESSIONAL EFFICIENCY AND ECONOMIC RESEARCH

The Minimum Fee Schedule Report (1969) submitted herewith by the Committee on Professional Efficiency and Economic Research updates the previous report submitted by a similar committee and approved by Council in 1962. The report *does not* constitute a state-wide minimum fee schedule but, as in 1962, is a report on the analysis of existing suggested fee schedules in Virginia. The committee bases its report on an analysis of some twenty-two minimum fee schedules which have been adopted by local bar associations in Virginia. Copies of the spread sheets used for this analysis are attached for reference.

The recommended minimum fee figures in the committee's report represent the consensus recommendations of members of the committee as to the minimum fees which should be assessed in 1969 for the various legal services indicated.

It will be noted that the revised report reflects a general scaling up of fees for legal services. The committee feels that this is to be expected because of the escalating cost of operating a law office and the spiraling increase in the cost of living in recent years. In a few instances there are substantial differences in the 1969 recommended minimum fees compared with the 1962 recommended minimum fees. These wide differences are due largely to what the committee believes to have been inexact appraisals in the past of reasonable minimum fees for certain legal services. Experience during the past seven years has been sufficient to enable the committee to recommend adjustments to correct obvious errors in judgment, which incidentally were notably few in number. The present committee is certainly subject to errors in judgment also, and future committees will undoubtedly find it necessary to make correcting recommendations based on accumulating experience.

The committee recommends that Council approve the Committee's report on minimum fee schedules and that the report be promulgated to the entire Bar of Virginia for its consideration. It should be clearly understood that no local bar association is bound by the committee's recommendations; that certain adjustments will have to be made in various circuits within the State. The schedule is submitted simply as recommendations and for the guidance of local bar associations.

REALTY

Title examinations (not including closing, settlement, preparation of papers):

(a) 1% of the first $50,000 of the loan amount or purchase price

(b) ½ of 1% of the loan amount or purchase price from $50,000—250,000

(c) Over $250,000 of loan amount or purchase price, by negotiation or agreement, but not less than the fee for $250,000

(d) Minimum fee for title examination, $75

Deed of bargain and sale 20.00

Deed of bargain and sale and assumption 30.00

(If description or other information not furnished, add $5.00 to the above.)

Assumption Transactions; in assumption transactions the minimum title examination fee of $50.00, applicable to Limited Title Certificate or so-called run-up chargeable to the buyer shall be in addition to the fee for preparation of the deed and for the closing and settlement fees chargeable to the respective parties.

Deed of trust and note 30.00

Deed of release 20.00

Contract of Sale - See: Contracts and Agreements.

Lease - See: Contracts and Agreements.

Waiver letter - Services incident to obtaining letter from FHA or VA waiving title defects 15.00

Closing and settlement fees, in addition to fees for title examination and preparation of papers:

(a) Closing and escrow fee, to purchaser or borrower 30.00
Explanation: This fee required upon preparation of statement, and disbursement of funds on behalf of or for account of purchaser or borrower, plus

(b) Settlement fee, to seller 30.00
Explanation: This fee required upon preparation of settlement statement, proration of amounts due to and from seller and disbursements of sales proceeds for account of seller.
Note: An attorney who conducts the entire transac-

tion shall charge the above settlement and closing fees to the respective parties.

Marginal release, as noteholder or as attorney in fact for noteholder 15.00

Mechanic's lien, preparation and filing with notices 100.00

Limited Title Certificate (Run-up) 50.00

TAX MATTERS

General Statement:

The total fee for a particular matter shall include charges for time consumed in conferences with clients and in research and shall reflect the novelty and complexity of points of law involved, the tax benefits to the client, and the responsibility involved. The fee shall give effect to a minimum hourly rate charged by the attorney involved.

WILLS AND ESTATE PLANNING

Whenever Federal estate taxes constitute a material factor, the charges to be made for the following instruments should be increased appropriately. Also, additional charges should be made for the time consumed by conferences, preparation of other instruments, supervision of execution of documents, and other duties, with due consideration being given to the importance of the matter, the responsibility involved, and the experience of the attorney.

Wills:

(a) Of basic type, not including future interests, trusts or fiduciary powers 50.00

(b) With trust provisions for family protection and preservation of small estates 150.00

(c) All other wills with trust provisions 200.00

For other trusts—See: Contracts and Agreements: Tax Matters.

Parallel Instruments: Whenever parallel instruments are drawn for the same client or clients, appropriate reductions may be made.

Realty:
Title Examinations (not including closing, settlement, preparation of papers)

Accomac County Bar, (1965)	1% first $10,000 of loan amount or purchase price. 1/2 of 1% on $10-50,000. Over $50,000 by agreement Minimum fee-$25.
Alexandria Arlington, (1962)	3/4 of 1% to $20,000. 1/2 of 1% $20-100,000 Over $100,000 by agreement.
Augusta County Bar, (1968)	1% up to $20,000. 1/2 of 1% $20-50,000. Over $50,000 by agreement. Minimum fee-$35.
Buchanan County Bar, (1967)	1% + $15 up to $30,000. 1/2 of 1% $30-250,000. Over $250,000 by agreement. Minimum fee-$25.
Charlottesville Albemarle, (1960)	1% + $25 to $10,000. 1% + $25 $10-15,000. 1% (not less than $170), $15-30,000. Add 1/2 of 1% on $30-250,000. Over $250,000 by agreement.
Halifax County Bar, (1964)	Detailed schedule set forth
Harrisonburg Rockingham, (1964)	1% + $35 up to $15,000. 1/2 of 1% $15-100,000. Over $100,000 by agreement.
Hopewell Bar, (1967)	1% up to $15,000. 1/2 of 1% $15-250,000. Over $250,000 by agreement. Minimum fee -$35
Lee County Bar, (1968)	Detailed schedule set forth
Lynchburg Bar, (1965)	1% up to $10,000. 1/2 of 1% $10-100,000. 1/4 of 1% over $100,000. Minimum fee-$50.
Mecklenburg County Bar, (1965)	Detailed schedule set forth
Radford Floyd Montgomery, (1966)	Same as State Bar
Newport News Bar, (1968)	1% up to $50,000. 1/2 of 1% $50-250,000. Over $250,000 by agreement. Minimum fee-$75.
Norfolk Portsmouth, (1968)	Same as Newport News
Northern Neck Bar, (1964)	Same as State Bar except amounts under $5,000
Richmond Bar, (1969)	1% up to $25,000. 1/2 of 1% $25-100,000. 1/4 of 1% $100,000-$250,000. Over $250,000 by agreement. Minimum fee-$75.
Pittsylvania County Bar, (1966)	Detailed schedule set forth
Roanoke Bar, (1968)	Same as Newport News. Minimum fee-$5.
Russell County Bar, (1968)	1% up to $25,000. 1/2 of 1% $25-100,000. Over $100,000 by agreement Minimum fee-$50.
Thirteenth Circuit, (1964)	Same as State Bar except amounts under $5,000. Minimum fee-$25.
Williamsburg Bar, (1965)	Same as Newport News. Minimum fee-$50.
Winchester Frederick, (1965)	1% up to $10,000. 1/2 of 1% over $10,000. Minimum fee-$25.
Virginia State Bar, (1962)	1% first $30,000 of loan amount or purchase price. 1/2 of 1% loan amount or purchase price from $30-250,000. Over $250,000 by agreement. Minimum fee-$50.
Recommended Revision, (1969)	Adopt Newport News Schedule

[Exhibit 28]

THE FAIRFAX COUNTY BAR ASSOCIATION

MINIMUM FEE SCHEDULE

Effective Date
MAY 1, 1962

PUBLISHED AND SUPPLIED
WITH THE
COMPLIMENTS OF THE MICHIE COMPANY

STATEMENT OF PURPOSES

The applicable canons of professional ethics lay down the standards for determining a reasonable fee for a lawyer to charge. A minimum fee schedule does not purport to fix a reasonable fee under all circumstances. As the name implies, a minimum fee schedule indicates a minimum fee, on the assumption of an ordinary transaction with a minimum of complicating circumstances, as well as a minimum of time and responsibility on the part of the lawyer.

The Virginia State Bar Committee on Legal Ethics, in Opinion 98 dated June 1, 1960, has ruled with reference to minimum fee schedules, as follows:

"We fully approve the recital in Canon 12 concerning minimum fee schedules that 'no lawyer should permit himself to be controlled thereby or to follow it as his sole guide in determining the amount of his fee'. We also are of the opinion that each lawyer has both a right and an ethical duty to charge a fee lower than that recited in a minimum fee schedule where the time required for the particular service, and its value, are themselves minimal, or where the poverty of a client, or other proper ethical consideration justifies such lower charge.

"However, this is to be distinguished from the situation existing where a lawyer, purely for his own advancement, intentionally and regularly bills less than the customary charges of the bar for similar services as reflected in a schedule of suggested minimum fees. Where the motive prompting the lawyer to repeatedly charge less is to increase his business with resulting personal gain, it becomes a form of solicitation contrary to Canon 27 and also a violation of Canon 7, which forbids the efforts of one lawyer to encroach upon the employment of another. To ignore such schedules under these circumstances has no ethical justification and deserves censure."

More recently, in December, 1961, the American Bar Association Committee on Professional Ethics handed down an opinion to the same effect, which is summarized in the American Bar News dated December 15, 1961, as follows:

"Fee Cutting 'Evils' Cited: In the new opinion (No. 302) the Committee said the establishment of such fee schedules by bar associations is a 'thoroughly laudable activity,' and that 'evils of

fee cutting ought to be apparent to all members of the bar.' It added that Canon 12 admonishes lawyers neither to overestimate nor undervalue their services, and observed that lawyers should not be put in the position of bidding competitively for clients.

"'It is proper for the profession to combat such evils by suggested or recommended minimum fee schedules and other practices which have a tendency to discourage the rendering of services for inadequate compensation,' the opinion said in part. 'Direct or indirect advertising, by whatever means, that a lawyer habitually charges less than reasonable or minimum fees would, of course, be objectionable.'

"While fee schedules are not alone controlling, 'it is equally true that the habitual charging of fees less than those established in suggested or recommended minimum fee schedules . . . may be evidence of unethical conduct, and the Committee accordingly so holds, anything to the contrary in Opinion 190 being hereby overruled, the new opinion concluded. Opinion 190 was dated 1939."

The adoption of this minimum fee schedule by the Association is part and parcel of its determination to enhance the prestige of the Bar. With that end in view, the recommended fees listed in this schedule are to be taken as a conscientious effort to show lawyers in their true perspective of dignity, training and integrity.

Nothing in this schedule is intended to conflict with local, State, or Federal authority regulating compensation of attorneys in those cases in which attorney's fees for legal services are controlled by State or Federal regulation.

VIRGINIA STATE BAR

Canons of Professional Ethics

(194 Va. cxliii)

FIXING THE AMOUNT OF THE FEE — In determining fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans, without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to properly conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other employment while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In determining the customary charges of the Bar for similar services, it is proper for a lawyer to consider a schedule of minimum fees adopted by a Bar Association, but no lawyer should permit himself to be controlled thereby or to follow it as his sole guide in determining the amount of his fee.

In determining fees, it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

CONTINGENT FEES — Contingent fees, where sanctioned by

law, should be under the supervision of the Court, in order that clients may be protected from unjust charges.

DIVISION OF FEES—No division of fees for legal services is proper, except with another lawyer, based upon a division of service or responsibility.

3% of next $75,000.00
2% of balance

In no event shall the fee for full administration be less than $250.00.

In those cases wherein the attorney performs services for the heirs of the estate he should charge that heir or heirs a fee based upon an appropriate hourly rate or in the discretion of the attorney a fee based on the schedule set forth above. The service herein contemplated would include collecting insurance proceeds which were not a part of the estate and such other matters or services not chargeable to the estate.

REALTY

(The following applies to those counties or cities hereafter adopting comparable fee schedules. In real estate matters, the subject of which is property in counties or cities other than those mentioned, the attorney should employ as nearly as possible the fee schedule employed in that jurisdiction.)

PURCHASERS' CHARGES:

Title examination: 60-year examination

Amount*

A. $1.00 to $20,000.00—¾ of 1%.

B. $20,001.00 to $100,000.00—½ of 1% (over $100,000.00 fee shall be individually set but not less than fee charged on $100,000.00).

C. Certificate of title—In those cases in which the attorney issues a certificate of title he shall charge an appropriate fee.

D. Closing or settlement fee—$25.00.

*(Amount as here defined means sale price in the case of a sale or loan amount in the case of a refinance.)

E. Limited title certificate or bring down:

Your association strongly recommends against the use of any limited title certificates based on a search for less than the customary period of time. However, should the client

The above fees are the minimum. Increases should be made whenever the amount involved, responsibility assumed, the difficulty of the legal problem encountered, or the time or procedures required are more than the minimum.

insist upon such a limited title or bring down, he should be made aware of the hazards involved and the title report or certificate clearly marked in such manner as to emphasize its limitations.

In such cases the fee shall be ½ of the fee charged under the schedule set forth in paragraphs A, B, C, & D above.

F. Refinancing bring down:

In those instances where an attorney is called upon to issue his certificate for the purpose of refinancing and he was the attorney who examined the title and issued the most recent certificate, the minimum fee shall be $50.00.

G. Preparation of title insurance application ..... $ 20.00

H. Preparation of deed of trust and note 25.00

If more than one note, then there shall be an additional charge of $1.50 per note for each additional note.

Preparation of deed of trust and note shall mean all types of deeds of trust and notes including preparation of construction, permanent, or construction permanent loan, deeds of trust and notes.

I. In those instances where an attorney is called upon to draw a deed of trust and note and to record the same without title examination or certification, a closing or settlement fee should be charged.

Example: Preparation of deed of trust and note .. $ 25.00
Closing and recordation 25.00

Total $ 50.00

J. Deed of subordination ..... $ 25.00

K. Escrows: In those instances when the settling attorney is called upon to hold an amount of money in escrow pending the completion of a house, repairs to be made, or the happening of any condi-

The above fees are the minimum. Increases should be made whenever the amount involved, responsibility assumed, the difficulty of the legal problem encountered, or the time or procedures required are more than the minimum.

tion, he shall make an appropriate charge for any legal instruments drawn or services performed.

SELLERS' CHARGES:

A. Preparation of usual or simple deed of bargain and sale ..... $ 20.00 25.00

B. Preparation of complex deed of bargain and sale shall be charged for on the basis of the appropriate hourly rate for time consumed, but in no case should the fee be less than ..... $ 20.00 25.00

C. Settlement fee (usual transaction) ..... $ 25.00

Explanation: This fee is charged for preparation of settlement statement, computation of amounts due to and from seller and disbursement of proceeds of sale on behalf of the seller.

D. Settlement fee (complex transaction)

A fee shall be charged on the basis of time consumed and the complexities involved, but in no case shall the fee be less than ..... $ 25.00

Note: In those cases where the property is free and clear and the seller's attorney furnishes the deed, the settling attorney shall make no settlement charges to the seller. In all other cases the attorney who conducts the settlement shall charge the settlement fee. If the seller has additional legal representation, such representation shall be charged for by the attorney so representing the seller and shall not in any way affect the fees charged by the settling attorney.

E. Preparation of deed of release ..... $ 15.00 20.00 25.00

F. Trustee fee (unless otherwise stated by trustee) per trustee ..... $ 5.00 7.50

G. Marginal release ..... each $ 10.00

The above fees are the minimum. Increases should be made whenever the amount involved, responsibility assumed, the difficulty of the legal problem encountered, or the time or procedures required are more than the minimum.

[EXHIBIT 29]

MINIMUM FEE SCHEDULE

THE ALEXANDRIA BAR ASSOCIATION
THE ARLINGTON BAR ASSOCIATION
THE FAIRFAX BAR ASSOCIATION
THE LOUDOUN BAR ASSOCIATION

The following schedule was adopted by each of the above Bar Associations. The schedule is the same for each Bar Association except where noted to the contrary.
Effective date:

The Alexandria Bar Association — July 1, 1969
The Arlington Bar Association — July 8, 1969
The Fairfax Bar Association — June 12, 1969
The Loudoun Bar Association — July 21, 1969

PUBLISHED AND SUPPLIED
WITH THE
COMPLIMENTS OF THE MICHIE COMPANY

STATEMENT OF PURPOSES

The applicable canons of professional ethics established the standards for determining a reasonable fee which a lawyer should charge in a given case. The purpose of a minimum fee schedule is not to fix a reasonable fee under all circumstances but is, as the name implies; a suggested minimum fee for the average case. A minimum fee schedule is based on the assumption of an ordinary transaction with a minimum of complicating circumstances as well as a minimum of time and responsibility on the part of the lawyer. It does not profess to set a fee in given cases but is suggested as a guideline.

This schedule of proposed minimum fees is advisory only and is intended to be applied as a guide in determining the conduct of the local bar as to what should be charged as a minimum under the circumstances outlined above. In all cases, the individual lawyer has the responsibility of determining a proper fee under all circumstances. There is no intention to require that the individual lawyer should use this schedule as a means of evading his ultimate responsibility to fix a fair and reasonable fee considering all of the circumstances of a particular case.

As a caveat it should be observed that the Virginia State Bar Committee on Legal Ethics, in Opinion 98 rendered June 1, 1960, ruled that a lawyer who intentionally and regularly charges less than the customary charges of the Bar for similar services as reflected in a schedule of suggested minimum fees for the purpose of increasing his business, with resulting personal gain, violates the Canons of Ethics in that his actions constitute a form of solicitation. Thus consistent and intentional violation of the suggested minimum fee schedule for the purpose of increasing business can, under given circumstances, constitute solicitation.

With these above considerations in mind, it should be realized that the schedule does not prohibit a lawyer from rendering legal services without charge or for less than the minimum charges specified herein to charitable or religious

associations, to persons who would otherwise lack protection of their legal rights, or for any other proper ethical consideration which justifies the fee in a particular case. Solicitation thus is determined by the particular circumstances involved, but can exist from a repeated course of action by attorneys who fit within the purview of Opinion 98 specified herein. It is strongly recommended that all lawyers read Opinion 98.

As a parallel consideration, it is just as improper for a lawyer to imply to clients or prospective clients that another lawyer who charges more than the minimum fees specified in this schedule is acting improperly. To do so would be to intimate what is not true. This is not a schedule of usual, regular or maximum fees and to state otherwise or publicly criticize lawyers who charge more than the suggested fees herein might in itself be evidence of solicitation on the part of any lawyer making such a suggestion.

The adoption of this schedule by the Bar Association is a public pronouncement of its determination to enhance the prestige of the Bar. With that end in view the recommended fees listed in this schedule are to be taken as a conscientious effort to show lawyers in their true perspective of dignity, training and integrity. Each lawyer must establish his own fees and the suggested minimum fee schedule set forth herein is to be used by lawyers as a guideline in appropriate cases. This document is not intended and should never be used to replace the individual discretion of attorneys to set their fees depending upon the particular circumstances of each particular case.

* * *

ministrative services as co-fiduciary and is also entitled to compensation for legal services rendered by him to the estate. Where his legal services are general representation of the estate, the attorney shall be compensated in accordance with the appropriate foregoing schedules.

REAL ESTATE

Title Examination: 60-Year Examination, including Certificate of Title

(a) 1% of the first $50,000.00 of the loan amount or purchase price, whichever is greater, with a minimum of $100.00.

(b) ½ of 1% of the amount of loan or purchase price, whichever is greater, from $50,000.00 to $100,000.00.

(c) ¼ of 1% of the loan amount or purchase price, whichever is greater, from $100,000.00 to $1,000,000.00.

(d) Over $1,000,000.00 of loan amount or purchase price, whichever is greater, by negotiation.

(e) A minimum of $25.00 shall be charged for each additional chain of title.

(f) As a minimum, developers of subdivisions should be charged a fee based on one-half (½) of the fee in accordance with the schedule set forth above. For the purpose of computing the fee, the amount shall be the sale price of the tract of land or lot at the time of the purchase. Upon payment of the fee so computed, the developer, in the discretion of the attorney, shall not be charged any further fee for title examinations, but shall be charged for each service performed thereafter in accordance with the schedule applicable to all other clients.

(g) Limited title certificate and bring down:
Your association strongly recommends against the use of any limited title certificates based on a search for less than the customary period of time. However, should the client insist upon such a limited title or bring down, he should be made aware of the hazards involved and the title report or certificate clearly marked in such a manner as to emphasize its limitations.
In such cases the fee shall be ½ of the fee charged under the schedule set forth in paragraphs (a), (b), (c), and (d) above.

(h) Refinancing bring down:
In those instances where an attorney is called upon to issue his certificate for the purpose of refinancing and he was the attorney who examined the title and issued the most recent certificate, the minimum fee shall be $75.00.

(i) Construction loans when periodically title is run to date. For each report ..... $ 25.00

Preparation of Title Insurance Application 25.00

Preparation of Deed of Trust and Note 30.00

If more than one note, then there shall be an additional charge of $2.00 per note for each additional note.
Preparation of deed of trust and note shall mean all types of deeds of trust and notes, including preparation of construction, permanent, or construction permanent loan, deeds of trust and notes.
In those instances where an attorney is called upon to draw a deed of trust and note to record the same without title examination or

certification, a closing or settlement fee should be charged.

Example: Preparation of deed of trust and note ..... $ 30.00
Closing and recordation 30.00

Total $ 60.00

Deed of Subordination ..... $ 30.00

Escrows:

In those instances when the settling attorney is called upon to hold an amount of money in escrow pending the completion of a house, repairs to be made, or the happening of any condition, he shall make an appropriate charge for any legal instruments drawn or services performed.

Representing Seller or Purchaser at Settlement in Another Attorney's Office 75.00

Closing or Settlement Fee 30.00

This fee is charged both to the seller and the buyer for preparation of settlement statement, time spent at closing and for disbursement of funds.

Add $5.00 for each trust paid off or assumed as to seller and $5.00 for each trust placed or assumed by buyer.

For a complex transaction the settlement fee shall be increased accordingly. The settlement fee shall be charged by the firm or attorney holding settlement whether or not seller or buyer are independently represented at settlement.

Preparation of Deed of Bargain and Sale 30.00

Preparation of Deed of Release:

(a) Full deed of release 20.00
(b) Partial deed of release 25.00

Trustee Fee (per Trustee) 7.50

Marginal Release (each) 15.00

Marginal release shall include partial or full release and a fee shall be charged for each of such releases.

TAX MATTERS

The fee in tax matters shall give effect to the appropriate minimum hourly rate depending upon the education, experience and professional standing of the lawyer in tax matters. The total fee for a particular matter shall include charges for time consumed in conferences with clients, accounting and legal representatives of clients, investigation, research and other preparation and shall reflect the novelty and complexity of points of law involved, the tax benefits to the client, and the responsibility involved.

The following minimum fees are suggested as a guide for the type of work specified:

(a) Obtaining formal revenue ruling ..... $ 500.00*
(b) Preparation of Federal Estate Tax return (including routine conference with auditing agent) 275.00*
(c) Preparation of Virginia Inheritance Tax return 125.00*
(d) Preparation of Federal Gift Tax return 60.00
(e) Preparation of State of Virginia Gift Tax return 60.00
(f) Preparation of State and Federal Gift Tax returns 100.00
(g) Preparation of a Qualified Pension or Profit Sharing Plan 1,000.00

(*) Only applicable if the attorney is not compensated under the Schedule of Minimum Fees of Probate and Administration.

Attorneys should not enter into wholly contingent fee arrangements without first providing the client with an

EXHIBIT 30

OPINION No. 98

JUNE 1, 1960

Subject:

Effect of "minimum fee schedule" adopted by a bar association.

Inquiries:

A lawyer, engaged in practice in a city where the local bar association has adopted a schedule of minimum fees to be charged for certain legal services, has referred to this Committee the following questions:

1. May a lawyer set his fees at sums less than charges suggested by a "schedule of minimum fees" adopted by his local bar association?

2. May the lawyer repeatedly charge such smaller fees?

It is important to observe that the inquiring lawyer states that his local association has adopted the schedule as a suggestion to its members, and has not undertaken to make its observance obligatory.

Opinion:

These inquiries are controlled by Canon 12 of the Canons of Professional Ethics. After reciting that in determining a fee, a lawyer may consider several influencing factors, one of which concerns charges customarily made by others for similar services, the Canon continues:

> "* * * No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

"In determining the customary charges of the Bar for similar services, it is proper for a lawyer to consider a schedule of minimum fees adopted by a Bar Association, but no lawyer should permit himself to be controlled thereby or to follow it as his sole guide in determining the amount of his fee."

It follows that normally a lawyer may properly set his fee at a sum less than that suggested by a locally approved minimum fee schedule where, as hereafter stated, such charge appears justified.

We fully approve the recital in Canon 12 concerning minimum fee schedules that "no lawyer should permit himself to be controlled thereby or to follow it as his sole guide in determining the amount of his fee." We also are of the opinion that each lawyer has both a right and an ethical duty to charge a fee lower than that recited in a minimum fee schedule where the time required for the particular service, and its value, are themselves minimal, or where the poverty of a client, or other proper ethical consideration justifies such lower charge.

However, this is to be distinguished from the situation existing where a lawyer, purely for his own advancement, intentionally and regularly bills less than the customary charges of the bar for similar services as reflected in a schedule of suggested minimum fees. Where the motive prompting the lawyer to repeatedly charge less is to increase his practice with resulting personal gain, it becomes a form of solicitation contrary to Canon 27 and also a violation of Canon 7, which forbids the efforts of one lawyer to encroach upon the employment of another. To ignore such schedules under these circumstances has no ethical justification and deserves censure.

EXHIBIT 31

VIRGINIA STATE BAR
COMMITTEE ON LEGAL ETHICS
OPINION NO. 170

May 28, 1971

Subject: Minimum Fee Schedule adopted by local bar Associations.

Inquiry: Does the Legal Ethics Committee adopt formally ABA Opinion 323 and does the Committee affirm the statements set forth in Legal Ethics Opinion 98 of this Committee?

ABA Formal Opinion 323 holds that minimum fee schedules can only be suggested or recommended and cannot be made obligatory, but that such minimum fee schedule is *one* element along with the other elements stated in Canon 12 and DR 2-106(B), which a lawyer should consider in determining a proper fee. The ABA opinion also holds that if a lawyer wantonly ignores the customary charges for similar services in his community in fixing his own fees, then he is failing to take into account one element which both Canon 12 and DR-106(B) say should be considered and if it is established through extrinsic evidence that he is doing this for unethical purposes, then all of this evidence taken together *may* establish unethical conduct. The ABA opinion concludes by stating that the Committee "has no hesitancy in holding that mere failure to follow a minimum fee schedule, even when habitual, cannot, standing alone and absent evidence of misconduct, afford a basis for disciplinary action. There are too many other elements to be considered (five under Canon 12, seven under DR 2-106) which might justify departure from the fee schedule."

Your Committee agrees that minimum fee schedules ca - not be made obligatory and that such schedules are but o e element to be considered along with those set forth in Can 1 12 and DR 2-106(B) in determining a proper fee.

Your Committee disagrees with that part of the AB formal opinion 323 that holds that mere failure to follow minimum fee schedule, even where habitual, cannot, stan - ing alone and absent evidence of misconduct, afford a bas s for disciplinary action. It is the opinion of this Committe that evidence that an attorney *habitually* charges less tha the suggested minimum fee schedule adopted by his loc l bar Association, raises a presumption that such lawyer s guilty of misconduct and requires the lawyer to produc evidence that such charges are not made for the purpose soliciting business but because the elements set forth i Canon 12 and DR 2-106 justify departure from the sug - gested minimum fee schedule.

This Committee reaffirms the statements contained i Virginia State Bar Legal Ethics Opinion 98.

The member of the Bar requesting this opinion is entitle to note an appeal to the Council within ten days from th date of mailing. This opinion will be presented to th Council at its next meeting on June 10, 1971.

/s/ N. S. Clifton

N. Samuel Clifton
Executive Director

May 28, 1971

EXHIBIT 36

UNITED STATES DEPARTMENT OF JUSTICE

Washington, D. C.

(Seal Omitted)

Address Reply to the Division Indicated
Refer to Initials and Number
LL:RLW:LB
60-360-0

November 24, 1961

Robert A. McGinnis, Esquire
McGinnis, Berg, Shadyac and Nolan
2014 16th Street, N.
Arlington, Virginia

Dear Mr. McGinnis:

This is in reference to your letter of October 12, 1961, in which, as Chairman of a committee to study the advisability of the Arlington County Bar Association's adoption of a proposed or suggested minimum fee schedule, you requested the advice of the Antitrust Division as to whether or not the adoption of such a fee schedule would violate the federal antitrust laws.

The Antitrust Division has never taken the position in the past that advisory minimum fee schedules established by Bar Association were subject to prosecution under the federal antitrust laws. It should be noted, however, that the posture of the Division in these matters was based primarily upon the presence of the following factors:

1. The activities of the local Bar Associations were not "in commerce" and did not appear to have a significant "affect" [sic] upon interstate commerce; and

2. The fee schedules established were not agreed upon as the amounts to be charged, but were advisory only and not mandatory or binding upon either the members of the profession or the Association concerned.

With respect to the latter, it would appear that certain canons of the established canons of ethics require that the individual lawyer retain responsibility for the establishment of his own fees and retain the freedom to make appropriate charges where the usual fees are not appropriate.

I hope that this may be of assistance to you.

Sincerely yours,

Lee Loevinger
Assistant Attorney General
Antitrust Division

by /s/ Robert L. Wright
Robert L. Wright
First Assistant

[Exhibit 37]

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

[SEAL]

WHO:LB
60-360-0

May 19, 1965

Mr. Hugh C. Cregger, Jr.
President
Arlington County Bar Association
2054 - 14th Street, North
Arlington, Virginia

Dear Mr. Cregger:

The Department has been receiving complaints about agreed-upon, "suggested", minimum fees to be charged by lawyers. We would appreciate the opportunity of discussing the Arlington County Bar Association schedule with you personally, and informally.

Your cooperation is greatly appreciated.

Sincerely yours,

WILLIAM H. ORRICK, JR.
Assistant Attorney General
Antitrust Division

By /s/ Lewis Bernstein
Chief
Special Litigation Section

[Exhibit 38]

May 26, 1965

Mr. Lewis Bernstein
Chief, Special Litigation Section
Antitrust Division
United States Department of Justice
Washington, D.C. 20530

Re: WHO:LB
60-360-0

Dear Mr. Bernstein:

Reference is made to your letter of May 19th last addressed to the undersigned as President of the Arlington County Bar Association.

I will be most happy to meet with you at any time at your convenience, and if you will have your secretary call me, I will be glad to arrange an appointment for both myself and Mr. Dave Kinney, Vice President of the Bar Association, to meet with you at your office.

Very truly yours,

Hugh C. Cregger, Jr.

HCC:emm

[Exhibit 39]

June 14, 1965

Mr. Lewis Bernstein
Chief, Special Litigation Section
Antitrust Division
United States Department of Justice
Washington, D.C. 20530

Re: WHO:LB
60-360-0

Dear Mr. Bernstein:

I very much appreciated meeting with you to discuss the complaints you have received concerning this Association's fee schedule publication. As I explained to you, while the publication has been distributed to members of this Association, appropriate language was contained within the publication stating that it was not meant to establish fees for lawyers but merely to be considered as one of the criteria that the lawyer himself should consider in setting his fees.

After discussing the problem with you, in light of antitrust statutes, I have taken steps to again call to the attention of each member of the Association that any publication regarding what other lawyers might charge is not binding in any way and that each lawyer, being a member of a profession, must establish his own fees based on considerations of time, experience, etc.

The Association will, through its standing committees, take additional action to clarify this matter. This cannot be done until the Fall as it will require action of the Association, and we will not be actively meeting during the Summer months. I shall keep you advised of the measures taken by this Association to correct any misunderstanding that the individual members might have.

Very truly yours,

Hugh C. Cregger, Jr., President

HCC:emm

EXHIBIT 40

UNITED STATES DEPARTMENT OF JUSTICE
Washington, D. C. 20530

(Seal Omitted)

Address Reply to the Division Indicated
Refer to Initials and Number
DFT:LB
60-360-0

July 8, 1965

Mr. Hugh C. Cregger, Jr.
President, Arlington County
Bar Association
Court House
Arlington, Virginia

Dear Mr. Cregger:

This acknowledges receipt of your letter of June 14, 1965 in which you indicate the position of the Arlington County Bar Association towards minimum fee schedules.

We note that in conformance with our recent discussion you have informed each member of the Association that any published schedule is not binding in any way and that each lawyer should establish his own fees based on considerations of time, experience, etc. We understand that after this matter has been discussed by the Association and

its committees this Fall you will advise us of any further measures taken by the Association.

Sincerely yours,

Donald F. Turner
Acting Assistant Attorney General
Antitrust Division

By /s/ Lewis Bernstein
Lewis Bernstein
Chief
Special Litigation Section

[Exhibit 41]

August 18, 1965

Mr. Lewis Bernstein
Chief, Special Litigation Section
Antitrust Division
United States Department of Justice
Washington, D.C. 20530

Re: WHO:LB
60-360-0

Dear Mr. Bernstein:

I am enclosing herewith a copy of a letter that I have caused to be mailed to each of the approximately 235 members of this Bar Association.

As I have previously stated to you, I feel that each individual attorney was aware that the final responsibility for setting fees belong to the individual attorney but if there has been any misunderstanding I feel that this letter will have dispelled the same.

I shall keep you advised as to further steps taken by the Bar Association during the fall meetings.

Very truly yours,

Hugh C. Cregger, Jr.,
President, Arlington County Bar Association

HCC:scp
Enclosure

[Exhibit 42]

ARLINGTON COUNTY BAR ASSOCIATION
COURT HOUSE
ARLINGTON, VIRGINIA

TO: MEMBERS OF THE ARLINGTON COUNTY BAR ASSOCIATION

As President of the Association, I would like to call each individual attorney's attention to a very important matter concerning the Bar Association's fee schedule guide –

This publication of suggested fees is advisory only and is intended to be applied as a guide as to what should be charged. The individual lawyer has the responsibility of determining what is a proper fee under all circumstances. The Bar publication is only one criteria to be used along with all other matters in determining what fee should be charged. In this connection, I would like to set out once again an excerpt from the Canons of Professional Ethics of the Virginia State Bar:

"In determining the amount of the fee it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to properly conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation

that otherwise he would be employed, or will involve the loss of other employment while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service."

Very truly yours,

/s/ Hugh C. Cregger, Jr.
President, Arlington County Bar Association

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA - ALEXANDRIA DIVISION

[Title omitted in printing]

EXCERPTS FROM REPORTER'S TRANSCRIPT

[Tr. 20]***

BY MR. BOOKER:

Q. Colonel McKenna, from what Law School did you graduate?

A. George Washington University.

Q. Have you engaged in the private practice of law at all since your graduation?

[Tr. 21]

A. No, I have not.

Q. Have you established an office?

A. No, I have not.

Q. Have you ever conducted an examination of a parcel of real estate in Virginia?

A. Yes, I have.

Q. In what instance?

A. My own, as a part of a student project while I was in the law school.

Q. Have you ever done it professionally?

A. I have not.

Q. Who determined the method of sampling which you used in preparing Exhibits 43 and 44 to which you have just testified?

A. Plaintiffs' attorney.

Q. Do you know the basis upon which that sample was calculated?

A. The only thing I know is some conjecture that I went through with Plaintiffs' attorney. I have no reason to know what decisions forced the methodology that was given to me point-blank that I would do a –

Q. Do you have any independent knowledge or background which would indicate whether that was a fair or an unfair sampling?

A. Oh, no, your Honor, I do not.

[Tr. 22]

Q. And do you know what universe was defined?

A. I don't – you will have to explain the word, "universe."

Q. Are you familiar with the use of the word "universe," in sampling techniques?

A. I am not.

Q. When you went through and determined who the beneficiary was, was the beneficiary in the out-of-state transaction so denominated?

A. In most instances, in the deed, in the beginning of the deed, there would be party of the first part, second part and third part indicated as a beneficiary. Otherwise, the great proportion of the savings and loan or mortgage company beneficiaries would be indicated as the people who were secured on the note and their location on the trust.

Q. Did you find any deeds of trust of the Prudential Insurance Company?

A. Prudential Insurance Company?

Q. Yes.

A. I don't recall offhand.

Q. Did you find any deeds of trust where the beneficiary was any insurance company?

A. I don't specifically recall, except that I believe the Equitable Assurance Company is on one of them. I think this was up in New York.

[Tr. 23]

Q. Do you know, of your own knowledge, whether Equitable Assurance Society has a local office in Northern Virginia to handle its transactions?

A. I do not.

Q. Was there anything on the Deed Book which would indicate whether there was a local office which was involved in the financing of the property?

A. As a rule, no. There were a minor number of instances. I take, for example, one; there is a company in Maryland, A.E. Langvoigt – I believe the spelling to be. When I began the survey or the study, the company and the individual were listed in Maryland. Later on, and I can't tell you where the dividing line is, payments were being made to an address in either Arlington or Alexandria.

In that case, that person was – remained listed as a red or out-of-state beneficiary.

Q. Was there any way you could tell from looking at a deed of trust which had an out-of-state beneficiary whether the financing of the transaction had been handled in a Virginia office or not?

A. There was not.

Q. Did you observe beside any of the deeds of trust a notation as to where the deed of trust was to be mailed after it was recorded?

A. I know that they are there from having seen some

[Tr. 24]

of them usually mailed back to a law firm, but I can't specifically say whether they were mailed out of state or in state.

Q. Did you consider the place to which the deed of trust was to be mailed in making the calculations which you show on Exhibits 43, 44 and 45?

A. They were not my instructions.

Q. And you did not do so?

A. I did not.

Q. Did you make the independent evaluation as to whether the deeds of trust covered real estate which was for commercial or industrial purposes and real estate which was for residential purposes?

A. I did not.

Q. What was the purpose of the $100,000 breakdown?

A. I do not know, of my own knowledge. I can guess.

Q. But you do not know?

A. I do not know.

Q. And so, you could not tell us which of these transactions are commercial and which of these are residential?

A. No, I cannot.

* * * * *

[Tr. 26] ***

BY MR. DUNN:

Q. State your name for the Court, please.

A. Sam Clifton.

Q. What is your occupation, Mr. Clifton?

A. I am the Executive Director of the Virginia State Bar.

Q. Would you explain briefly to the Court your educational background and professional background?

A. I have a B.S. in Commerce from the University of Virginia, 1952; L.L.B., George Washington University, 1959. I was admitted to the Bar in February 1960.

Q. You mean the Bar of Virginia?

A. Bar of Virginia, also a member of the District of Columbia Bar by the reciprocity provision. I practiced Law in Alexandria and around Northern Virginia from 1960 to 1962. I was employed by the American Bar Association as Director

[Tr. 27]

of their Economics Department from 1963 until 1966. I came to the Virginia State Bar in 1966. I was Assistant Executive Director until 1969, and I have been Executive Director since 1969 until the present time.

Q. What would be a general description of your duties, Mr. Clifton, as Executive Director of the State Bar?

A. I have overall responsibility for administering the affairs of the State Bar under the general policies and guidelines established by the Council of the Virginia State Bar, which operates under rules of the Virginia Supreme Court.

I am the Chief Executive, you might say, of the organization. I have the overall responsibility for administration of the staff, for overseeing the operation of the State Bar, internal and external.

Our principal function is to process complaints regarding the conduct, professional conduct, of members of the Virginia State Bar and to oversee the practice of law generally within the rules established by the Supreme Court and the Council actions as manifested in opinions that are adopted by the Council with regard to the conduct of Virginia State Bar members.

We are a unified Bar. By that I mean that all lawyers who practice in Virginia are required to belong to the Virginia State Bar and must maintain their standing with the Virginia State Bar in order to practice Law.

[Tr. 28]

Q. In your duties as Executive Director, do you have occasion to meet on a regular basis with all the committees of the State Bar?

A. I do.

Q. With specific reference to the Ethics Committee, do you meet, as a general rule, regularly with that Committee?

A. I do.

Q. Could you explain the organizational setup which the Virginia State Bar has, in terms of receiving complaints about attorneys?

A. Well, the Bar was established for disciplinary purposes, or the disciplinary enforcement is administered through the operation of ten District Committees, which correspond with the ten Congressional districts, and for each Congressional district or each district, a committee of 7 or 14 members is appointed, depending on the volume of complaints or the geographical size of the district.

Where there is a large geographic district, the committee is of 14, sits in panels. Where the volume of complaints

is high, the panel of 14 sits in separate panels so that each panel has a reasonable workload.

The complaints come from many sources. Many come directly to the State Bar office there in Richmond. I get them from – directly, as the Director of the State Bar, I

[Tr. 29]

get them from the Governor's office, from the Attorney General's office. I get them from Washington, from the U.S. Attorney General, from the President, various sources – from people who are disgruntled in one way or another – or the American Bar Association.

Another way in which complaints are received are by the District Committees, themselves, and that comes about generally by the person who wants to complain finding out for himself how the system operates, and he finds out who the chairman of a particular District Committee is, and he forwards a complaint to the chairman.

One way or another the chairman of the committee takes action on the complaint, whether it comes in through the State Bar office, or to the chairman or a member of the District Committee, personally.

I send all the complaints to the appropriate District Committee, and that's where the disciplinary action originates, if disciplinary action is indeed taken.

The chairman of the District Committee assigns the complaint, if it is in proper form – and by proper form, I mean that the complaint is required to be in writing and notarized – and when it is in that form – we don't accept oral complaints. When it is in proper form, I send it to the chairman of the District Committee. He assigns it to a member of the District Committee to conduct a

[Tr. 30]

preliminary investigation to determine the nature and extent of the complaint, and to determine whether there is probable cause that a disciplinary violation has occurred.

This is done by the District Committee member talking with the complainant to define clearly what the nature of the complaint is, and if the committee member determines that there is – appears to him to be probable cause, he reports back to the full committee on his finding and recommends that additional investigation be undertaken or that a formal complaint be issued and a formal hearing set.

Then, the formal hearing, if that comes about, is done through a procedure established by – through the Court whereby the committee hears all the evidence involved and from that hearing, there may come a petition to reprimand an attorney or to disbar or suspend him.

That is kind of an over-view of how the system operates.

Q. Other than a conduit for forwarding complaints to the committee, what role does your office or any member of your office take in this problem?

A. From time to time, if the complaint necessitates somewhat extensive investigation, and we do have a special counsel, James Wrenn, whose responsibility is principally to work with the ten District Committees, and assist them

[Tr. 31]

in investigations.

Prior to Mr. Wrenn's employment by the Bar, we had on occasion employed private detectives and accountants to review books, to conduct investigations on an ad hoc basis, when the situation seemed to require it.

This is done when the District Committee feels that a particular complaint requires knowledge, expertise, investigative service that is more than can reasonably be handled by a volunteer attorney, who works on the District Committee without compensation.

Q. The special counsel does not, then, investigate all complaints?

A. No, only the ones that are involved.

Q. It would be fair to say that the number of complaints he investigates is a fairly small percentage of the total?

A. A small percentage.

Q. Does the local committee have any investigative force whatsoever?

A. No.

Q. Any employees of their own or of the State Bar?

A. No.

Q. Is there any type of investigative group which might be fairly described as attempting to ferret out instances of violations of the canons?

[Tr. 32]

A. No.

Q. Would it be fair to say that you only take investigative action upon receiving a complaint in the natural order of things?

A. Only when we receive a complaint.

Q. Would you explain, again in an over-view form, exactly what the State Bar does, and its committees do,

with respect to the rendering of official opinions on ethical matters?

A. Well, the rules provide that any member of the State Bar can request and advise an opinion regarding a contemplated course of action. When a request does come in, it is generally in the letter form, setting forth a set of facts which the requesting attorney would like an opinion from the Ethics Committee as to the propriety of conduct contemplated in a factual situation.

The Ethics Committee will either respond informally, if it is a specific set of facts or set of circumstances that are rather peculiar, have no widespread application. That is an informal opinion. It is just a particular response to a particular question.

We have the formal opinion. The formal opinion is rendered in cases where the factual situation set forth is one of wide application and of concern to the lawyers generally, and the Ethics Committee will write an opinion

[Tr. 33]

on the propriety of a proposed course of conduct, and that opinion is submitted to the Council, under State law, which meets normally twice a year, and the Council will approve or disapprove or refer the opinion back to the Ethics Committee, and the Council, by rule of Court, has the authority to adopt these ethics opinions which construe the Code of Professional Responsibility, under which lawyers are bound and are supposed to practice their profession.

Q. Going back for just a moment to the committees which consider complaints, do you have any records in your office of the complaints which are received – and I

am speaking now not of the complaints that you receive initially in your office, but of complaints that are being handled by the local committees?

A. Normally, I receive – I ask all the District Committees to send me copies of the minutes of their meetings, and a docket or agenda of the matters under consideration, and I am advised – provided they pay attention to me when I tell them to send me copies of the minutes – they normally do. I keep a finger on what goes on in the various District Committees.

Q. To your knowledge, has there been received in your office the complaint with regard to an attorney charging less than the minimal fee schedule?

A. Not since I have been with the Bar, and that is

[Tr. 34]

December 1966.

Q. Would that be true with regard to any area of the State, not only Northern Virginia?

A. Of all areas.

* * * * *

BY MR. BOOKER:

Q. Mr. Clifton, have you caused a collection of all

[Tr. 35]

the complaints or disciplinary actions taken since the integration of the Bar in 1938 to date to be assembled and produced for counsel for the Plaintiffs?

A. I produced several documents and data in response to interrogatories that were served on me.

Q. Did that include all records of disciplinary actions or complaints against attorneys for violation of Canon 12 for the period of 1938 to date?

A. For Canon 12, right.

Q. Did you, yourself, review that?

A. Oh, yes.

Q. And did you find anywhere in them any evidence, from the time of the integration of the Bar in 1938 to date, that any disciplinary action had ever been taken against an attorney for failure to adhere to a minimum fee schedule?

A. Nothing that was indicated in the records, no.

Q. And did you find any complaint against an attorney for that reason?

A. Nothing in the records, the files.

Q. Has the Virginia State Bar, from time to time, assembled the various advisory minimum fee schedules published by the local Bar Association?

A. Oh, yes, we have.

Q. And what have you done with that?

A. Well, the first compilation we made – I was not

[Tr. 36]

with the Bar at the time – was 1962, and then in 1969, I prepared a compilation of local Bar Association schedules.

Q. What was done with that after it was compiled?

A. It was sent to the members of the Bar as a statistical analysis of fee schedules – those that I received, anyway. I think there were 21 or 22.

Q. Were the fee schedules from each Bar Association identical?

A. Oh, no.

Q. Did you observe a variance from location to location from time to time?

A. Varying very much

* * * * *

BY MR. DUNN:

[Tr. 37]

Q. Would you state your name for the Court?

A. My name is John D. Conner.

Q. And you are an attorney, Mr. Conner?

A. Yes, I am.

Q. What Bars are you a member of?

A. I am a member of the Bar of the District of Columbia, having been admitted in 1938, and a member of the Bar of the Supreme Court of the United States.

Q. Have you been active during your period of practice in the District of Columbia in your local Bar organization?

A. Yes, I have, to some extent. I have practiced in the District of Columbia since my admission to the Bar in 1938, except for a period of time during the Second World War.

I have served as Chairman of the Committee on Administrative Law – the Section on Administrative Law of the District of Columbia Bar Association. I have served on its Board of Directors. I have served on its Ethics Committee. I have served on the Committee on Judicial Selections of the Federal Bar Association, the District of Columbia Chapter.

I am presently Chairman of the Committee on Economics of Law Practice of the D.C. Bar Association.

Q. And have you been active as well in the American

[Tr. 38]

Bar Association?

A. Yes, I have, to some extent.

Q. Will you relate your activities in the American Bar Association?

A. I have served as a member and as Chairman of the Committee on Economics of the Law Practice of the American Bar Association. This is a standing committee of the American Bar Association. Its primary function is to attempt to increase the efficiency of members of the Bar through continuing education in the use of staff, devices, equipment that will enable them to better perform their services, through the adoption of office systems and records that will enable them to determine just and adequate, equitable fees, and by developing program material, sponsoring programs of that nature, engage in these continuing education activities.

Q. And how many years have you been a member of that – or were you a member of that committee?

A. I was a member of that committee for approximately six or seven years, and was Chairman of the committee, I believe, for a period of four years.

I am presently Chairman of the Research Review Committee of the Fellows of the American Bar Foundation, a member of the Research Committee of the American Bar Foundation.

[Tr. 39]

Q. Have you authored any publications with regard to fees and billing practices?

A. Yes. I am the author of the chapter on fees and billing practices that appears in the Lawyer's Handbook, a publication of the American Bar Association, that has been quite widely distributed, I believe some 100,000 copies, to members of the Bar.

Q. Have you played any part in the organization of any courses in this area?

A. Yes. I have the primary responsibility in planning and conducting the First National Conference on Law Office Management, sponsored by the American Bar Association.

I have been a participant in the subsequent second, third and fourth conferences, national conferences on law office management, also sponsored by the American Bar Association.

I recently was a participant in a Conference on Law Office Management, sponsored jointly by the American Bar Association and the Canadian Bar Association.

* * * *

[Tr. 40] * * *

BY MR. DUNN:

Q. With respect to your service in these capacities, Mr. Conner, have you had occasion to meet with state and local officials of Bar Associations, in terms of discussing fees and billing practices?

A. Yes, I had occasion during the time that I served on the Committee on Economics of Law Practice to meet

with groups of attorneys in numerous states and localities to explore various problems in the law office management field. I would guess probably some tweenty states or so, and many localities.

Q. As a result of your activities in these areas, do you feel that you are familiar with the ethical principles involved in billing and fee practices and with specific regard to minimum fee schedules?

A. I believe so.

* * * * *

[Tr. 42] * * *

BY MR. DUNN:

Q. Mr. Conner, would you discuss, in general detail, the origin of the fee schedules and their use in the organized Bar?

A. I will and, in doing so, I hope that counsel or certainly, the Court, if it feels that I am going into more detail than is relevant to the case – because I am not familiar with the issues in the case – I hope that I will be advised of that.

The use of minimum fee schedules is intimately tied to the responsibility of the attorney to determine a

[Tr. 43]

fee that is adequate and just, both to the client and to the attorney. This revolves around the use of, originally, of Canon 12 of the Canons of Ethics of the American Bar Association, which in turn was adopted by certainly the majority of the states.

Canon 12 was originally issued or adopted by the American Bar Association in 1908. It set forth six factors to be

considered by an attorney in arriving at a just and fair fee. Those factors were the time, labor, and skill, the loss of business employment because of antagonisms or conflicts involved in the case, the customary charges of the Bar for similar services, the amount involved in benefit to the client, the contingency or certainty of compensation, and whether the employment was casual or continuing.

In the Canon, as it was originally adopted in 1908 there was no reference to the use of minimum fee schedules. In May, 1930, however, the Committee on Ethics of the American Bar Association was asked to rule on the use of a minimum fee schedule by an attorney in arriving at the fee.

The opinion of the Ethics Commitee in substance was that an attorney's adherence to an obligatory fee schedule which is applicable to every case of the same nature would violate Canon 12.

[Tr. 44]

Again, in July, 1973, in Opinion 171, the Committee on Ethics, again, held that no attorney should permit himself to be controlled by an obligatory fee schedule, nor should any Bar Association undertake to impose such a restriction on him.

However, almost at the same time, Canon 12 was amended by the American Bar Association to add this additional paragraph:

"In determining the customary charges of the Bar for similar services, it is proper for a lawyer to consider a schedule of minimum fees adopted by a Bar Association, but no lawyer should permit himself to be controlled thereby, or to follow it as his sole guide in determining the amount of his fee."

At about this same time, the Courts began, on occasion, to be concerned or had to consider the question as to whether it was proper for attorneys to use minimum fees.

On two occasions, in the 1930s, Courts did hold that it was proper for attorneys to refer to minimum fee schedules in arriving at their fees. The two cases that were decided in the 1930s –

* * * *

[Tr. 45] * * *

BY MR. DUNN:

Q. Mr. Conner, if you will, direct your attention more specifically, then, to the reasons for use of the minimum fee schedule.

A. All right. After Canon 12 was amended to specifically recognize the use of minimum fee schedules, the American Bar Association in 1963 published a publication, the manual for assistance of state and local Bar committees, in evolving and adopting minimum fee schedules.

In the foreword it pointed out, specifically, that, "Such schedules should not be considered as mandatory as the final determination of fees, must always be made in the light of relevant conditions prescribed by the Canons of Ethics, and especially Canon 12."

At that time, there had been approximately 600 localities, local Bar Associations, that had adopted minimum fee schedules and some twenty or so states at that time had adopted them.

[Tr. 46]

In 1961, the Committee on Ethics of the American Bar Association, in Opinion 302, held that the habitual charging

of fees less than those established by a minimum fee schedule, or the charging of such fees without proper justification, may be evidence of unethical conduct.

In 1962, the American Bar Association appointed a special committee on the evaluation of ethical standards. This committee made a thorough study of the existing Canons of Ethics of the American Bar Association and, eventually, evolved a new Code of Professional Responsibility, which was adopted then by House of Delegates in 1970.

It has restated, in substance, the Canons of Ethics, and as to Canon 12, it has been incorporated, in substance, in two parts, the first, that is designated as Ethical Consideration 218, which states, "Suggested fee schedules and economic reports and state and local Bar Associations provide some guidance on the subject of reasonable fees," and refers to earlier opinions of the Ethics Committee of the American Bar Association, holding, "That no attorney should be bound by such schedules but should consider them as advisory only."

At the same time, in what is referred to as Disciplinary Rule 2.106, Paragraph B, it states eight factors to be considered by an attorney in arriving at a figure, in place of the six that were set forth in Canon 12, and these

[Tr. 47]

six – or the eight factors that are specified in the new disciplinary rule are these:

"The time and labor involved, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly;

"The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

"Three, the fee customarily charged by the locality for similar legal services;

"The amount involved and the results obtained;

"Five, the time limitations imposed by the client or by the circumstances;

"Six, the nature and length of the professional relationship with a client;

"Seven, the experience, reputation and ability of the lawyer or lawyers performing the services; and,

"Eight, whether the fee is fixed or contingent."

In substance it maintains – retains the time, labor and skill factor, the fees customarily charged by the Bar, and recognizes the use of minimum fee schedules as a factor or as an aid in arriving at a just and proper fee.

Q. Did you have occasion to compare the Virginia Code of Professional Responsibility with the American Bar

[Tr. 48]

Association's?

A. I have in these –

Q. With regard to these two?

A. Yes. Since its adoption in 1970, the Code of Professional Responsibility has been adopted by some fifty states, I believe, including Virginia.

I have compared the provisions of the Code of Professional Responsibility of Virginia in the two parts that I have referred to, and they are identical.

Q. All right.

A. I believe that concludes my discussion of that.

Q. O.K. Then, would you at this time explain in what way the minimum fee schedule is considered to be a tool in terms of the Code of Professional Responsibility? What is the position of the Bar with regard to the reason for its use?

A. One of the factors to be considered by an attorney in arriving at his fee, both under Canon 12, under Ethical Consideration 218 and Disciplinary Rule 106 is the question of fees customarily charged by lawyers in the locality for similar service.

The minimum fee schedules, I think – well, the use of minimum fee schedules have been recognized by both Canon 12 and by the new rules as a tool to be used by the attorney in applying this factor.

[Tr. 49]

It has, also, I think, some application in applying the time, labor and skill factor, advising an attorney as to when applying the time, labor and skill factor, what that factor is, as applied by other members of the Bar.

It has been my observation, in discussing this question with attorneys, that the primary value of minimum fee schedules, particularly, or first to the younger attorney who is just starting to practice, does not have the expertise as possibly the older members of the Bar, by reducing these intangible factors to a more tangible factor as to what the result would be as applied to a particular case.

It has been my experience, also, that it is of value to clients to give them some guide as to whether fees that they are being charged are equitable and proper.

I have found it, also, to be of value when an attorney gets into a field of practice where he is not particularly

competent, does not have a basis of judging how long it should take him to perform a particular task. It provides him, in such cases, with a guide that he can apply in determining whether a fee that he might arrive at, say, solely on the basis of time, is or is not an equitable fee.

Q. Apart from being useful to the older attorneys in that regard, is that of any benefit to the client?

[Tr. 50]

A. Yes, I think that it is. Again, it gives the client some basis for judging the reasonableness of the fee that he or she is being charged in a particular case.

Q. With regard to 2.106 would it be fair to say that the purpose of this canon is to establish a fee which is both reasonable to the attorney in terms of his being adequately compensated, and reasonable to the client in terms of receiving what he paid for?

A. Yes, I think so. Other factors of the Code of Ethics to which I have not referred specifically provide that it is unethical for a lawyer to charge more than a reasonable fee. At the same time, others – other parts provide that it is unethical for an attorney to charge less than a reasonable fee under the circumstances, again considering all of the factors specified in 2.106, such as the ability of the client to pay, the value to the client, and things of that nature.

So, it is just a guide to be used in bringing these intangible factors to a more tangible result, and the use of them by the Bar Association, we have always advocated that the minimum fee schedule should be freely made available to the client, so they can be used by the client as well as by the attorney in arriving at the judgment as to whether or not a particular fee is reasonable.

Q. How is it to the client's detriment and to the

[Tr. 51]

public's detriment if an attorney charges a fee lower than that which would adequately compensate him?

A. I think there are a number of reasons why that would be detrimental to the client or to the public.

First, one of the factors that I have encountered in my discussion of these problems with members of the Bar is the practice of some attorneys in localities of doing work for a client, say, a real estate developer – doing title work for him at no fee, on the basis of what I would refer to as a tie-in understanding that all of the closings, then, of the purchases will be referred to him.

I think that is – the use of a proper fee schedule in a case like that would clearly be to the benefit of the client, because it prevents the client, the individual purchaser, subsequently, from having to pay for services that someone else should have paid for, by the use of the tie-in arrangement.

I think, also, that the factor must be considered that, if the Bar is to perform its services in a reasonable manner, it must be compensated. The lawyer, individual lawyer, must be compensated for his services to the extent that he can afford a proper library, proper equipment, proper facilities, employ a staff that will enable him to perform his services most beneficially, to engage in continuing education, and things of that nature. A reasonable

[Tr. 52]

amount of income or proper income is necessary for that.

My experience also has indicated that the cases where a complaint is most likely to be filed against a member of

the Bar, for a misappropriation of client's funds or situations of that nature, are instances where the attorney has not been able to perform his services efficiently, possibly has not known how to arrive at a just and equitable fee, and the pressure of financial circumstances, then, eventually, resulted in the misappropriation of client funds.

Q. Finally, I would like to direct your attentioin to one other technical aspect of minimum fee schedules, and that is where the attorney charges less than the minimum fee schedule, and I am speaking now particularly with reference to ABA Opinion 3.3 and the Opinions 98 and 170 of Virginia.

Would you discuss your understanding of the reason behind that opinion and what the substance of that opinion is?

* * * * *

[Tr. 53] * * *

A. This opinion, I believe, did two things or enunciated two principles. First, it was rendered shortly after the adoption of the new Code of Professional Responsibility in 1970.

It first reaffirmed the principle that the new Code of Professional Responsibility recognized the use of the minimum fee schedule as a proper aid or guideline to

[Tr. 54]

an attorney at arriving at a figure. It re-emphasized the point –

* * * * *

BY MR. DUNN:

Q. The Court is aware of the holding. If you would, explain the position of the Bar with regard to it.

A. Based on conversations that I have had with individuals that have appeared before the Committee on Ethics, the type of situation that was responsible for the statement in the opinion that the systematic charging of less than minimum fees may be considered evidence of unprofessional conduct, were the types of situations to which I referred a while ago, where an attorney will perform legal services for one client at no cost, or at very low cost on the basis of a tie-in understanding that he will be referred business by others, and based upon my discussions with members of the Bar, it was that type of situation that was responsible for the original Opinion 3.02 and the restatement or clarification in 3.23.

* * * * *

[Tr. 55] * * *

BY MR. BOOKER:

Q. Mr. Conner, is a lawyer permitted to advertise?

A. No.

Q. Why is that?

A. Because of the concept that law is a personal service to be rendered on what you might refer to as a quality basis. It is a personal service rather than a commodity that is to be sold, and the concept that advertising for clients is inconsistent with this basic concept that it is a personal service rather than a commodity.

Q. Is Law regarded as a learned profession rather than a trade?

A. Yes.

Q. Is there any connection between advisory minimum fee schedules and the prohibition against an attorney's advertising?

A. Yes. The opinions have pointed out the relevance that the charging, habitual charging, of less than an equitable fee or fees customarily charged is for the purpose

[Tr. 56]

of soliciting clients, which is the equivalent of advertising of the services.

Q. Are you familiar with the expressions, champerty and maintenance?

A. Yes, sir.

Q. Can you tell us generally what they cover?

A. It is my understanding that they cover the concept where an attorney deliberately promotes litigation for his own personal gain.

Q. Is that prohibited?

A. Yes.

Q. Is there any relationship between the prohibition against champerty and maintenance and minimum fee schedules?

A. I personally do not see a direct connection, nor do I recall discussion in the relevant opinions of the Committee on Ethics on it. I personally had not thought of it in those terms.

Q. Based on your knowledge and understanding of the profession of Law, is there a public interest in maintaining high professional standards of ethics and of education?

A. Yes, sir.

Q. Is there any relationship between minimum fee schedules and that principle?

A. Yes, I think there is. As I referred to in my direct testimony, it has been my experience that it is

[Tr. 57]

usually in those cases of the attorneys who, for one reason or another, do not know how to charge proper and adequate fees. It is the attorney who cannot afford the continuing education, the time to keep abreast of professional developments, to acquire the equipment that will enable him to properly perform his services, so I think that there is a direct connection.

Q. In your opinion and based on your experience, is an attorney who does not have time for continuing, time and funds for continuing legal education, for adequate staff, able to render the services to the community at large which the Bar expects?

A. No, I do not think so. I do not think that he can, and in my work with the American Bar Association, we have conducted surveys of lawyers and lawyers' practices in quite a number of states, and we have seen the direct relationship in these surveys to the fee practices – and by the fee practices, I mean the practice of an individual attorney in keeping accurate time records, accurate description of the services that he has performed, and his income, and the time that he devotes to continuing education, Bar work, and work of that nature. So, I think there is a direct connection.

MR. BOOKER: Thank you, sir. I have no further questions.

* * * * *

[Tr. 62] * * *

BY MR. BOOKER:

Q. Mr. Goldfarb, please state your name and residence address.

A. Lewis H. Goldfarb, 12110 Quorn Lane, Reston, Virgina.

Q. Are you the Plaintiff and a representative of the class in this action?

A. That is correct.

Q. What is your educational background?

A. I received a B.A. from New York University in 1966, and a J.D. from Rutgers University in 1969.

Q. Are you a member of the Bar of any state?

A. I have been admitted to the District of Columbia

[Tr. 63]

Bar, 1969.

Q. By whom are you employed and in what position?

A. I am a trial attorney for the Federal Trade Commission, Bureau of Consumer Protection.

Q. Did you have an occasion to purchase a residence in Virginia in 1971?

A. I did.

Q. Where were you living at the time you decided to purchase another residence?

A. I am sorry. The purchase was made in 1972.

Q. Did you have occasion to look for a new house in Virginia in 1971?

A. Yes.

Q. Where were you living at the time?

A. In Arlington.

Q. Is that located in Virginia?

A. Yes.

Q. Where did you go to look for a new house?

A. Various places in Northern Virginia.

Q. Did you reach a conclusion as to where you wished to make a purchase?

A. Yes.

Q. Where did you in fact make a purchase?

A. In Reston, Virginia.

Q. Can you tell us the name of the person from whom

[Tr. 64]

you purchased the property?

A. The seller was Fox Vale Construction Company.

Q. Where is Fox Vale Construction Company?

A. Located in Reston, Virginia.

Q. Did Fox Vale handle the sale of the property directly?

A. Their agent, Wellborn Realty, did.

Q. Is Wellborn the exclusive agent for Fox Vale?

A. I am not sure of that. They are the on-site agents.

Q. Where is Wellborn located?

A. Reston.

* * * * *

BY MR. BOOKER:

Q. How did you decide to finance the property?

A. Through a bank.

Q. What bank or institution did you choose?

A. Northern Virginia Savings and Loan.

[Tr. 65] * * *

BY MR. BOOKER:

Q. When did you first find out that you wished to have a title examination of this property made?

A. The seller requires a title examination, and I was later informed that it would be advisable for the purchaser also to have his interest insured.

Q. Do you mean Fox Vale required you to have a title examination?

[Tr. 66]

A. I am sorry. The seller – the lender –. I am sorry. The lender required title insurance which required a title examination.

Q. Is this the first home you have ever owned?

A. Yes.

Q. Did you not know independently, from your legal background, that a title examination was a good idea?

A. Title examination?

Q. Yes.

A. If one wanted title insurance, I knew they had to have a title examination. Title insurance, I was told, was a good idea.

Q. But even if you did not want title insurance, did you not expect to have the title to the property examined?

A. I hadn't thought about it.

Q. You entered into the transaction for the sale of the property without concern whether you had title to the property examined, is that correct?

A. I entered into the contract to purchase the house without considering whether I was going to have title insurance or title examination.

Q. And had the lender not required a title examination, you would not have had the title examined, is that correct?

A. No; I probably would have had.

[Tr. 67]

Q. Could you tell us when in time the awareness came to you that you should have the title examined?

A. Between the time of signing the contract and the time of the closing on the house.

Q. Why did you decide, after you had contracted to purchase the house but before the closing took place, that you wanted to have the title examined?

A. I had some equity in the house and I wanted to make sure that there were no adverse claims against my equity.

Q. So you regarded this as an important aspect of your purchase of the house, did you not?

A. Yes.

Q. So even if the lender had not required title insurance, it is your present view that you would have wanted the title examined?

A. I would have wanted title insurance.

Q. In order to protect your equity in the house?

A. That's right.

Q. And your equity was in the magnitude of $39,000, is that correct?

A. I believe that is in the record.

Q. And did you secure title insurance because of your equity as well as the lender's interest in the property?

[Tr. 68]

A. I was required to cover the lender's interest and I obtained it to cover my own, as well.

Q. So the portion of the title insurance which was required was only the lender's, and the rest you took because you wanted it yourself?

A. Yes.

Q. When you signed the contract, did it provide who would handle the closing of the transaction?

A. Yes.

Q. Were you aware of that at the time you signed the contract?

A. No, I wasn't.

Q. Did you read over the contract before you signed it?

A. I read it over but the name of the attorney was in the same size and type print as the rest of the contract was, and I just – that wasn't an important clause at the time I read the contract. I don't recall being aware that the attorney was designated in the contract at the time I signed it.

Q. Do you mean that the name of the attorney was typed in after you signed it?

A. No, I don't recall being aware that the name of the attorney was in there. It was not typed in afterwards, but having read the contract, I do not recall being aware

[Tr. 69]

at that time that the attorney was designated to handle the closing.

Q. But, in fact, the attorney's name was typed in at the time you signed the contract?

A. The attorney's name was in the contract at the time I signed it.

Q. When did it come to your attention that that attorney would handle the closing?

A. When I realized what I would be paying for title insurance and I thought it was unreasonable, and I thought that since I was obtaining the loan and I was obtaining the title insurance, that I should be able to obtain my own attorney to perform that service.

Q. Did you have any discussion with the attorney designated in the contract as to whether you wished him to handle the closing or not?

A. I sent a letter to that attorney indicating my reservations about him handling it for the reasons that I have just given.

He responded saying that the seller requires that all closing – words to the effect the seller requires that all closings on this cluster of houses be handled by this law firm.

Q. And did you then, thereafter, attempt to find another attorney to handle this closing for you?

[Tr. 70]

A. Yes, I did.

Q. And did you succeed in finding someone else to handle the closing?

A. No.

Q. How many law firms did you consider?

A. Approximately 35, over a period of about six weeks. I originally contacted eight by letter and I got – received two responses, so I sent out fifteen to seventeen more after that.

Q. Did any of those attorneys disclose a specific charge or a fee to you for handling the closing?

A. My letter indicated what the fee for my closing would be, and I asked the attorney or the law firm whether their fees would vary. Nineteen replied by letter indicating that their fee was the same as the Bar Association fee schedule.

Q. Did any of them state a specific monetary figure?

A. No. I don't recall, but I don't think so.

Q. When you were looking for other attorneys who might handle the examination of the title, what did you expect to do about the attorney whose name was already prepared in the contract which was signed?

A. I felt that I was not legally bound to have that attorney represent my interests as well as the seller's, and I thought that I could prevail upon him to

[Tr. 71]

allow me to have my own attorney do the settlement, if I so desired.

Q. And so, after you consulted the other attorneys, you decided to stick with the man whose name was in the contract?

A. I was unable to find an attorney who would charge less, which was the main basis that I was seeking other attorneys.

Q. And so, under those circumstances, you were

satisfied with the attorney who was provided in the contract which you had previously signed?

A. Yes.

Q. Did the lending institution from whom you were borrowing a portion of the money require that any specific attorney handle the title examination?

A. No.

Q. You were free to choose whoever you wanted to, were you not?

A. Yes.

Q. Did you have anything to do with the recording of the deed?

A. Did I participate in the recording of the deed?

Q. Yes.

A. The actual recording? No.

Q. Did you participate in the closing transaction,

[Tr. 72]

except to be there as the purchaser?

A. No.

Q. Once the transaction was closed, did you receive a copy of the deed?

A. Yes.

Q. And from whom did you receive a copy of the deed?

A. A. Burke Hertz.

Q. Was he the attorney who represented you at the closing?

A. He was the attorney who handled the closing, representing both parties, I presume.

Q. Have you ever examined a real estate parcel in Virginia?

A. A parcel or the deed records?

Q. The deed records or in any manner?

A. No.

Q. Do you regard yourself as qualified to do so?

A. I have never done it so I can't say that I am qualified.

Q. I show you a letter, which was introduced in your deposition, dated December 22, 1971, from Mr. King, to you, and ask you whether you remember receiving this letter?

A. Yes, I received it.

Q. Is that one of the letters you referred to when you said that all the attorneys who wrote back to you said

[Tr. 73]

they would charge the minimum fee schedule?

A. This was one of the letters that was included in the responses that I received.

Q. And you categorized that as a response that the attorney would charge the minimum fee schedule?

A. I didn't categorize it as one in which the attorney would charge less than the fee schedule. It clearly says here – makes no reference to the fee schedule. He indicates that he does not quote fees by mail and that you had to make an appointment with somebody in his firm who would discuss the matter further.

Q. So it is not an accurate summary of your testimony to say that all the attorneys who responded to you

said that they would charge the minimum fee schedule, is that correct?

A. That is not an accurate summary.

Q. Some said they would and some didn't say, is that correct?

* * * * *

A. I interpreted this response as one in which the

[Tr. 74]

law firm would not go below the fee schedules, since all other 18 responses indicated what they would charge. I thought there was no bar to a law firm doing so, so I construed this as meaning that the firm would not charge below that schedule.

Q. Did you make any appointment to talk with any member of that firm?

A. No.

Q. Did you ever consult with the firm of Boothe, Prichard and Dudley?

A. No.

Q. Have you ever read your title insurance policy?

A. Yes.

Q. Do you know what it protects you against, in general?

A. Any adverse claims of record. There was a list of about ten or twelve exceptions to it. Those include mostly claims that would not be recorded in the land records, various other liens and tax claims, prior to my purchase.

Q. Do you know what liability, if any, the examining attorney has assumed under the title insurance policy?

A. I have been led to believe that, as a general rule–

Q. Do you know, from your own knowledge?

[Tr. 75]

A. Well, my knowledge is based upon what I have been told, and I have been told that it is very infrequent that an attorney ever is held liable for an inaccurate title search.

Q. There is nothing in the title insurance policy which provides one way or the other about that, is there?

A. No.

* * * * *

F. SHEILD McCANDLISH

was called as a witness by counsel for Defendant Fairfax Bar Association and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOOKER:

Q. Please state your name and residence address.

A. F. Sheild McCandlish, 3806 Lakeview Terrace, Falls Church, Virginia.

[Tr. 76]

Q. What is your occupation?

A. I am a lawyer.

Q. With what firm do you practice?

A. Boothe, Prichard and Dudley in Fairfax.

Q. What is your professional background?

A. I graduated from Georgetown Law School in 1947,

and in that year became a member of the Virginia State Bar, and I have been in private practice ever since in Fairfax.

Q. Is your practice concentrated in any particular field?

A. At the present time, and I would say for the past ten or eleven years, it has been specializing in the field of Real Estate Law.

Q. Does your practice encompass the examination of real estate transactions and the handling of real estate closings in Reston, Virginia?

A. Yes, it does.

Q. Can you give us an estimate over the past four years as to the number of such transactions you and your firm have handled in Reston?

A. In Reston, I have examined my files and find that the number of house settlements – actually, transfer of houses from buyer to seller – seller to buyer – have been about 600, a little bit, about 620.

[Tr. 77]

Q. And can you tell us approximately how many transfers there have been in Reston all together, in both those handled by your firm and those handled by others?

A. That is rather difficult. I think that they are in the neighborhood of 3,000.

Q. Are some of those reconveyances?

A. Some of those would be reconveyances.

Q. Do you have any estimate as to the number of original conveyances?

A. In Reston, totally?

Q. Yes.

A. I think, in those four years, there were probably in the neighborhood of 1,800 to 2,000 conveyances.

Q. Of which your firm handled approximately 600?
A. Or a little less than that, because the 619 I mentioned included some reconveyances that we handled.

MR. BOOKER: If your Honor please, in our proposed statement of facts on behalf of the Fairfax Bar Association, Paragraph 34 through 37 describes the steps in a typical real estate settlement and examination of title. That has been prepared with the aid and assistance of Mr. McCandlish.

I understand counsel for the Plaintiffs have agreed as to the accuracy but not the relevancy of those

[Tr. 78]

paragraphs, and rather than have Mr. McCandlish go through those paragraphs one at a time, I propose a stipulation that Paragraphs 34 through 37 of Fairfax's proposed Findings of Fact accurately summarizes the steps in a real estate transaction and examination of title, generally, and in the Reston area particularly.

THE COURT: All right, sir.

MR. MORRISON: Your Honor, may I just make one statement for the record with regard to that?

First, we don't believe that this is relevant at all at this stage of the proceeding, that is the liability as opposed to the damage question, and while we have prepared evidence on the liability question, we will agree these are the statement of facts.

Should we get into the question of damages in this case, we would want to reserve the right, any right to challenge

any of this, but there is no point in doing so now, at this time, your Honor, and with that reservation we have no objection, subject only to relevance grounds.

THE COURT: All right. It has been stipulated, then, that the factual matters contained in proposed stipulations 34 through 37 are correct for the purposes of this hearing?

MR. MORRISON: That is correct. That is the

[Tr. 79]

proposed Finding of Fact and Conclusions of Law.

THE COURT: Of the Defendant Fairfax Bar Association?

MR. MORRISON: That is correct, your Honor, yes, sir.

THE COURT: I will overrule your objection at this time as far as relevancy is concerned.

BY MR. BOOKER:

Q. Mr. McCandlish, in your practice, have you become aware of the recommended minimum fee schedules adopted by the Fairfax Bar Association?
A. Yes, I have.

Q. How did you become aware of them?
A. Well, these schedules were discussed at Bar Association meetings, and I believe they were voted on as to whether or not there should be a suggested fee schedule, and this has been, in several instances, been revised from time to time.

* * * * *

[Tr. 80] * * *

BY MR. BOOKER:

Q. I now show you Exhibits 36, 37, 38, 39, 40, 41 and 42 attached to the stipulation that authenticity, but not the relevance of which has been admitted by the parties, and ask you whether this exchange of correspondence summarizes in substance your understanding between the Department of Justice and Northern Virginia Bar Association?

A. Yes, it does.

MR. BOOKER: If your Honor please, those exhibits have not been admitted in evidence. I now offer them into evidence.

MR. MORRISON: We object, your Honor, on the grounds that it is irrelevant and constitutes opinions of law. Moreover, it involves correspondence between the Arlington County Bar Association, no longer a Defendant in this case, and the Justice Department, and we feel that, in our view, it has no relevance whatsoever in the

[Tr. 81]

action.

THE COURT: What would be the relevance?

MR. BOOKER: If your Honor please, the Defendant Fairfax Bar Association takes the position that the adoption of minimum fee schedules is a reasonable means of handling transactions of this nature. The reasonableness, then, we say is in issue, that the reasonableness is in issue, and that the knowledge of the position taken by the Department of Justice surely is important to the reasonableness of local Bar Associations who promulgate such schedules.

THE COURT: I am not at all sure that reasonableness is in issue, but I am not prepared to rule finally on that at this stage on that basis.

In the event that I ultimately become convinced that reasonableness is in issue, this might bear on that. To that extent, and that extent only, I will receive them in evidence. For that purpose only, I will receive them in evidence.

MR. BOOKER: That is the purpose for which they are offered, your Honor. We don't expect them to be binding on the Court as to the law involved.

THE COURT: All right. Objection overruled.

BY MR. BOOKER:

Q. During your own practice, have you had occasion

[Tr. 82]

to make inquiries of others as to the position of the Department of Justice on minimum fee schedules?

A. At one time, as Chairman of the Real Estate Committee of the Fairfax County Bar, the question was discussed, and an attorney named Michael Horwatt raised the question and I asked him if he would look into it, and he did, and he came back with the same kind of answers indicated in those letters, that it was not regarded as a violation.

Q. What purpose, if any, does your firm make of the minimum fee schedules in real estate transactions?

A. It is used as a guide. I have made studies of costs and expenses of handling these transactions. The schedule

is departed from frequently if there are any special circumstances that would warrant it. It is used, however, as a guide in fixing the fee in an ordinary case, in many ordinary cases.

Q. Is it your firm's policy to adhere strictly to the minimum fee schedules in settling real estate transactions in Reston?

A. No, I would think that – I have been over every file for the four years. I didn't understand the exact date, but I went over files from February 22, 1968, to February 22, 1972, a four-year period. As I say, during that time we settled 619 cases, to my best count.

[Tr. 83]

Now, the accuracy of my figures here may not be 100 percent. It was a long, arduous task to pull each file and make a determination on this, but that is the figure that I think would be 95 or better percent accurate, and of those 619 cases, I would say that in 393 of them we did not charge the actual fee set out by the minimum fee schedule, and that means, in that case, they would be lower.

There were a few cases, I am sure, where we charged more than the minimum fee schedule, but they were very few.

Q. Can you describe the circumstances and categories in which you did not charge the minimum fee schedule in those, approximately, 400 where you did not charge the minimum fee schedule?

A. About half of these were this type of thing, which I think everybody is familiar with by now, and that is that the fee schedule or the rate that would have been

dictated or would have been suggested by the fee schedule was applied to the loan amount rather than the purchase price.

In other words, if it was a $30,000 house and a $20,000 loan, the title examination fee would have been put at $200 and then, after settlement, if the purchaser wanted a title policy in the name of the owner, then some

[Tr. 84]

additional amount would be charged that would have been based on the purchase price, but I would say that that would be true of about 200 cases, out of the 619, that this lower amount was charged and the total fee to us was less on that account.

As a matter of fact, I made for the one year only – I didn't get through the whole thing, but for 1968, I totaled up all the fees that we got in the Reston settlements and it came out that the purchaser paid an average of $278 per settlement. This would have been substantially under what the minimum fee schedule would dictate or would cite or suggest.

The other kind of deviations were these kind of things. Some special cases where a minister bought a house, I recall, in one of these files, and even though he paid all cash, I think we charged him half of the ordinary charge.

There were cases where Reston, itself, paid the fees, and in those cases, in most of them, I would say, we charged something like one percent of the total purchase price as the total legal fee, and that was it – the buyer-seller combined, that was the fee we charged. That would be in the neighborhood of $125 less than what would have been charged if it had been charged according to the minimum fee schedule.

[Tr. 85]

There are other things such as refinancings and construction loans and things, where – I'm not even sure what the minimum fee schedule says, to be frank about it, but I am sure that we charged them, in many cases, even less than cost to us, simply because of the person.

I recall, for instance, that in, I think it was 1970, when the ceiling was taken off the interest rates. Interest rates went up to around 9 percent in the spring of that year. By that fall, they had gone down, and in those cases – maybe it was 7.5 percent where somebody wanted to refinance and get rid of that high interest rate – we charged a nominal fee to do that, just out of the fact that this just wasn't right for a person to have to go through all that again.

I don't know. There may be some other circumstances but I can't recall any at the moment.

Q. Did you ever have any discussion with any Bar organization or committee relating to your fee schedule or your charges for refinancing?

A. On that particular situation, I did. I told them that this was a situation that I didn't know what they felt about it, but that I was just simply going to charge them a nominal fee as far as title examination was concerned for a $40,000 loan, and the answer came back

[Tr. 86]

that it didn't make any difference, they weren't enforcing it, anyway.

Q. Did anyone ever make a complaint against you or your firm for your fees in connection with refinancing?

A. No.

Q. Have you, yourself, ever served on a District Committee?

A. Yes, I have.

Q. Which committee?

A. It was the Tenth District Committee.

Q. For what period of time, sir?

A. It is a four-year term and I think I was on there roughly from 1964 to 1968. I don't recall the exact dates.

Q. During that period of time, was there ever any complaint to your committee about an attorney who failed to adhere to a minimum fee schedule?

A. No. There was no complaint of any kind and no discussion that I ever heard about it at all.

Q. Did your committee ever take any action against anyone?

A. No, they did not.

Q. What is the purpose of a title examination of a parcel of real estate?

A. Well, it is to determine, of course, if there

[Tr. 87]

are any liens or encumbrances upon the property and the easements or rights-of-way which might make it unfit for the use for which it is purchased, any such thing as that, delinquent taxes, judgments, any kind of a lien.

Q. What process do you consider in establishing your fee for rendering such legal services?

A. Well, I consider several factors. One of them is, of course, the cost to us of rendering the service. As I look

back at it in 1968, the average fees that we got there in Reston, I would say – I don't know if that did anything more than cover the cost. Today, I am sure it wouldn't begin to cover the cost of what it costs to do a settlement there.

So we look at those things and, generally speaking, the customary charges in the community are about right. I feel that in a subdivision, even though the Reston title, itself, is one of the most difficult things that you can encounter, and a vast amount of time, as I think will be set out in those stipulations, is spent every day in just trying to keep up with this thing. There is something over 3,000 entries in the grantor index under the Reston entities that have to be examined some time. They open up a new section and every one of those things has to be looked at.

Those factors are taken into consideration, but

[Tr. 88]

also it is really the only development that we have had a whole lot to do with of any size, except one back in 1950, and based on the fact of doing all this work and keeping this thing up to date, even though it is a mammoth undertaking, it seemed to me we could charge a little less in Reston than we could on the type of work where we are doing random titles. It is for that reason that I felt we were able to charge less than the suggested fee for an ordinary real estate closing in many cases.

Q. Do you attempt to establish an average charge for houses approximately of the same value in the same location?

A. Yes, we do.

Q. Does that necessarily reflect the amount of work involved in each individual title?

A. No, it does not. This can vary greatly and it seems that in this type of practice I don't know of any other way it can be done properly.

I can think of a case this past year where I would imagine that it took maybe 20 hours of my time alone, in addition to 65 hours of a title examiner's time. This kind of case is difficult and it required the drafting of rather sophisticated documents to clear up a title defect. The net result is we got exactly the same fee we would have if we had encountered no trouble, and the point is if everybody pays the same in an average situation, it

[Tr. 89]

doesn't make any difference how difficult or how simple the title is, as a rule, roughly the same amount is charged.

Q. Is there any potential liability to an attorney who examines the title in Reston or in Fairfax County?

A. Yes, I would say there is. The bulk of that kind of liability is in small amounts such as delinquent taxes that are missed or redoing instruments or rerecording, and various things that have to be done over.

Some things can occur, you know, you make a bad mistake and miss something, and we did pay the sum of a $5,000 claim because of something that we had done wrong.

That happens very, very seldom, I am glad to say. It is not the kind of thing I would want to run into very often.

Q. Is it necessary to prepare and file deeds of correction?

A. Yes, it is, and I might also add that we are being sued right now for a half a million dollars on a question of a certificate of title. The case will be heard this month.

Q. When it is necessary for your firm to prepare a

deed of correction or pay taxes you may have missed, or something of that nature, do you go back again to the person who engaged you to examine the title to recover that loss?

[Tr. 90]

A. Absolutely not. That is our responsibility.

Q. Have you made any recent calculations as to what your direct labor charges are for examining typical parcels in Reston? * * * * *

A. Well, now, to bring us somewhat up to date, I would say this – did you ask me for the total settlement or the examination of title?

BY MR. BOOKER:

Q. Well, first, let's take the total settlement.

A. The total settlement costs, I would say, in the year 1971, were in the neighborhood of $310.

Q. Does that include –

A. Now, that does not include – that is only the salaries. That does not include anything for the rent of the building, the telephone or any supplies or anything

[Tr. 91]

else, and that would be the salaries that I would pay.

Q. Does that include anything for your salary or earnings as a supervising partner?

A. No, it does not, or for any partner in the firm. That does not include anything for the partnership.

Q. That is only the direct labor charges with no overhead and no profit and no administrative expenses?

A. That is correct.

Q. When one desires to examine a real estate parcel in Reston, Virginia, where does he go to conduct that examination?

A. He goes to the Clerk's Office of the Circuit Court of Fairfax County in the City of Fairfax.

Q. Is there any other place to which he might usually or regularly want to go to make an examination or a check?

A. Well, as far as the taxes are concerned, he would have to go to the Tower Building there, which is the County office building. It is set apart from the Courthouse. He might have to come to Alexandria to this Court to check bankruptcy records, but that would be very rare.

Q. Is there any reason for him to go out of the State of Virginia?

A. You could conceive of such a reason, I suppose. I don't know that I ever have.

[Tr. 92]

Q. Can you think of any reason to conduct a real estate examination of a title in Fairfax, property located in Fairfax County, why you would need to go outside the State of Virginia to conduct that examination?

A. The only possible reason would be to get some information. For instance, if somebody had died living in the State of Kentucky and you were trying to trace them down or locate an heir or something like that, you might go, but you wouldn't be – well, I suppose if he had a will there, you might want to see what the will said, but on the other hand, the chances are you would write and get a copy of it rather than go there. That is all I can say.

Q. But the record books that you have .o refer to are located in Virginia, are they not?

A. That's right. The record books in Fairfax County, if you have a good title, should be complete in and of themselves so that ycu don't have any missing links in the chain of title, and you can have it all on the records, and if it is not there, then you would have to see to it that it is recorded there.

Q. Is the minimum fee schedule which you have referred to for Fairfax County one that is promulgated nationwide?

A. Not to my knowledge.

[Tr. 93]

Q. What area does that affect?

A. Well, I am really not sure about that. I am sure that it is intended to be used in Fairfax County. The State Bar schedule, I am not sure whether it absolutely parallels it or not. It may be the same figures, but that is not adopted by anybody as far as I know.

Q. In addition to your own firm's nonadherence tc the minimum fee schedule, do you know of your own knowledge whether other firms in Fairfax do not rigorously adhere to the minimum fee schedule?

A. I would say this, that I have seen a number of instances, where I have attended settlements elsewhere, for instance, where they had not followed exactly the minimum fee schedule. I don't know whether that would be their practice because I don't do that very often.

I would say, from hearsay, I have heard that many do not. I have also heard of the – I think they introduced here, about the Arlington Bar and eighteen firms down there. I have never seen that document.

Q. But you know of your own knowledge from other closings you have attended, that it is not always adhered to?

A. Oh, yes.

Q. Are you a member of the Fairfax Bar Association?

A. Yes, I am.

[Tr. 94]

Q. Have you ever served as an officer or a member of the Executive Committee of that Association?

A. I was President of it, I think, in 1964, and I don't know about the Executive Committee. I may have been on it. I guess I was ex officio or something, after being President.

Q. At that time, did the Fairfax Bar Association offer to render legal service to anyone?

A. Not to my knowledge.

Q. Has it ever offered to render legal service to anyone since you have been a member of it?

A. Not that I know of.

* * * * *

[Tr. 105] * * *

BY MR. BOOKER:

Q. Please state your name and residence address.

A. John T. Hazel, Jr., 5117 Brookridge Place, Fairfax, Virginia.

Q. What is your occupation?

A. Attorney.

Q. What is your educational background?

A. College degree and Law School degree.

Q. Are you a member of the Virginia Bar?
A. Yes, sir.

Q. Where do you practice?
A. Fairfax, Virginia.

Q. How long have you been practicing in Fairfax, Virginia?
A. Fifteen years.

Q. Is any portion of your practice devoted to real estate matters?
A. Not a great deal of mine, but some of my firm's practice at this time.

Q. Are you familiar with the minimum fee schedule promulgated by the Fairfax Bar Association?
A. In a very general way.

[Tr. 106]

Q. To what extent, if at all, do you make reference to it in your own practice?
A. In my personal practice, none. In the firm's practice, occasional, if any.

Q. And why is that?

MR. MORRISON: Your Honor, I would object to that question.

THE COURT: What was it?

MR. MORRISON: Why his firm doesn't refer to it.

THE COURT: Objection overruled.

A. Well, I distinguish first between my personal practice in which I, individually, do very little if any real

estate work. In the non-real estate areas, I have never referred to the fee schedule in any way at all.

In the real estate area, in the process of discussions regarding fees in the past ten or twelve years, I imagine I have at least been aware of the fee schedule amount a half a dozen times.

Q. Has your firm adhered to that fee schedule when it has had real estate transactions?

MR. MORRISON: Your Honor, I would object. I think that if they want to ask the witness to testify about

[Tr. 107]

what the firm does on real estate, the partners who are familiar with those matters and work on them should be called. This witness has stated that he is not familiar with real estate matters at all and doesn't do them. I don't think he is a proper witness on that.

A. I don't think that is quite what I said.

THE COURT: Objection overruled.

A. I am familiar with all areas of the firm and have been.

BY MR. BOOKER:

Q. Are you the senior partner in your firm?
A. Yes, I am.

In connection with the real estate, we have occasionally referred to it as a guideline, particularly on isolated – or I would say solely rather than particularly – solely on isolated single lot settlements, which we do not encourage, and which are always a problem because they very frequently cannot be accomplished economically and return a profit.

Q. Have you had occasion to handle the examination of real estate titles or real estate settlements where the seller or the developer paid the cost?

A. We have encouraged that approach in the past two or three years.

Q. Can you tell us how your fee is established under

[Tr. 108]

those circumstances?

A. We review – and I have participated principally in that sort of activity, and I suppose it would be fair to say that it is usually my determination that sets the policy for the firm in those kinds of cases.

We review the project involved, the relationship with the seller and the firm, the type of housing that is involved. For example, a number of our clients, as are many people, many developers in the industry, are terribly concerned these days about the ultimate cost to the consumer of the housing unit involved.

We have three basic types of units that are settling frequently in the County, the single family which, of course, is probably the principal type in number, but in recent years the townhouse and the condominium units. In the townhouse unit, there is usually a homes association. In the condominium, it is under the current Virginia condominium regime.

These latter two are particularly good examples of efforts to reduce the cost of housing to the consumer. We have worked closely with our developer clients in fixing a fee for the entire settlement transaction that is then paid by the seller, and because of certain economies in the sales process and the settlement process, we think

this affords a better opportunity to reduce the ultimate cost

[Tr. 109]

to the consumer than the more conventional division of settlement fees in part by the buyer and in part by the seller, and in keeping with that approach, in each of our negotiations regarding a price to the seller, we have looked at the project, the cost of the project, the selling price of the units, the finance institution that will be involved.

There is a great deal of variety in involvement with the finance institution. Some are very simple to deal with and, therefore, the work required is less. Some are very complicated to deal with and, obviously, we have a great deal more work.

The various Government programs, the FHA and the VA add other work requirements that have a direct bearing on cost.

Actually, the paperwork, as we call it, is a much more relevant matter in a major development settlement situation than the title itself.

Once the title is completed, the title can become relatively routine, and we have attempted to adjust the settlement analysis, the cost analysis, to accommodate what we think are the true cost centers in the settlement process, and they involve the paperwork, the dealing with the purchaser, the actual settlement in the office, the time spent, and so on, and in those situations, in fixing

[Tr. 110]

the price, we have endeavored to compute the time requirement as an area for profit and come up with a figure to the seller that would take care of the entire settlement

transaction, including the financing, the conveyance, and all the matters related to the typical settlement.

That has been the approach we have taken in practically all of our negotiations in the last two years.

* * * * *

[Tr. 111] * * *

BY MR. BOOKER:

Q. Mr. Duvall, please state your name and residence address.

A. Joe Duvall, 5116 Forest Gate Place, Fairfax, Virginia.

Q. What is your occupation?

A. I am a lawyer.

Q. What is your firm name?

A. Duvall, Tate, Bywater and McNamara.

Q. Where do you practice?

A. Fairfax, Arlington, Alexandria. Sometimes I go up in the country.

Q. Are you a member of the Fairfax Bar Association?

A. Yes.

Q. Do you hold any position in the Fairfax Bar

[Tr. 112]

Association?

A. I am the President.

Q. Have you held any position in the past in the Fairfax Bar Association?

A. I was President Elect and I was Chairman of the Courts' Committee and several other committees.

Q. How long have you been a member of the Fairfax Bar Association?

A. Since 1963.

Q. When did you begin to practice in Fairfax?

A. 1963.

Q. What has been your previous legal experience?

A. Well, I was a lawyer for ICC for a year. I had to get out of there and came out here and practiced since May of 1963 up to the present.

Q. Since you have been a member of the Fairfax Bar Association, to your knowledge, has it ever rendered legal service or advice to anyone?

A. No.

Q. Does it now render legal service or advice to anyone?

A. No.

Q. Are you aware of the minimum fee schedule promulgated by the Fairfax Bar Association?

A. Yes.

[Tr. 113]

Q. Did you participate in the preparation of that schedule?

A. No. Well, only to the extent of going to Bar meetings and, you know, when it came up, but no, I didn't.

Q. Based on your experience in Fairfax, what usefulness or value does the minimum fee schedule have?

A. Well, No. 1, a young lawyer comes up, passes the Bar and goes out and hangs up his shingle, it gives him a measuring stick for what to charge for simple wills or various cases that he gets in the office. You know, he is not in with a large firm and so he really doesn't know what to charge. He has no basis. They don't teach them this in law school, and so the minimum fee schedule acts as a guide to him, helps him.

By the same token, we have a lot of Government-type lawyers that, you know, when they retire or moonlight, it gives them a measuring stick by which to go by in order to charge fees.

I know it helped me when I started out in practice, and I know that it helps them.

Q. Do you adhere to the schedule established by the minimum fee schedule now in your own practice?

A. No.

Q. Why is that?

A. Well, because I know what my costs are and I know

[Tr. 114]

what to charge. I mean, I know at least what I think my service is worth and, you know, if they want to pay it, fine. If they don't, there are plenty of other lawyers that they can hire.

Q. Has anyone ever recommended disciplinary action against you, so far as you know, for failure to adhere to the minimum fee schedule?

A. If they did, nobody told me about it.

Q. Is the schedule mandatory, so far as you know?

A. No. It says right in the schedule itself, that it is merely advisory. It is in evidence here.

Q. From what you know of the Fairfax Bar Association and your experience in the area, is it generally regarded by the members of your Association as advisory only?

MR. MORRISON: I object to the question, your Honor.

THE COURT: Objection overruled.

A. Yes. They couldn't get anything else from it. There has never been one person tried, prosecuted, for violating it that I am aware of, and I think the State Bar Association has been in business since – the State Bar has been in business since 1938, and there has never been a case prosecuted by the State Bar for anybody charging consistently less than a minimum fee.

Q. Are you aware of any activity undertaken by the

[Tr. 115]

Fairfax Bar Association, either while you were President or prior to that, in which the Association has attempted to cause its members to adhere to the minimum fee schedule?

A. No.

Q. Are you aware of any activity by the Fairfax Bar Association, either during your Presidency or before that, in which it has attempted to circulate its minimum fee schedule to all members of the Association?

A. No. The minimum fee schedule was made available at the courthouse, and the members knew about it

and any of them that wanted to pick up a copy of it could.

Q. But it was not circulated to the membership at large, however?

A. Not unless you call that circulation.

Q. Insofar as you know, has the Fairfax Bar Association ever agreed or entered into any kind of undertaking or understanding with any other Bar Association about the enforcement of any minimum fee schedules?

A. No.

Q. Does your firm engage in any substantial real estate practice?

A. Well, we don't have any big builders. We do property settlement work, yes. We handle settlements. We don't represent Gulf-Reston or –

Q. In connection with those settlements, what is

[Tr. 116]

the basis for your establishment of your fee?

A. Well, I don't do the settlements. Harlow McNamara does the settlement work in our office, and I know that he takes into consideration the time that it is going to take him to do the title search on the land and to draw the instruments, deeds, deeds of trust, and the time spent in getting the information from the lender and what the lender is going to require, the points, and all of that business; and I know this all goes into what he charges, but I know that we have charged less than the minimum fee schedule and that we have charged more than the minimum fee schedule, and that we are not bound by the minimum fee schedule.

* * * * *